120-464

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~389~~ 142

JANE HERRON AND CHARLES D. HERRON, HER HUSBAND, IN RIGHT OF SAID JANE; ELIZABETH B. JACKSON AND JOHN A. JACKSON, HER HUSBAND, IN RIGHT OF SAID EILIZABETH B.; CHARLES J. TOWER AND R. M. CUMMINGS, PLAINTIFFS IN ERROR,

vs.

PHILIP DATER AND ELIZABETH L. FELLOWS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 11, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 399.

JANE HERRON AND CHARLES D. HERRON, HER HUSBAND, IN RIGHT OF SAID JANE; ELIZABETH B. JACKSON AND JOHN A. JACKSON, HER HUSBAND, IN RIGHT OF SAID EILIZABETH B.; CHARLES J. TOWER AND R. M. CUMMINGS, PLAINTIFFS IN ERROR,

vs.

PHILIP DATER AND ELIZABETH L. FELLOWS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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1 *Appearance. Docket Entry.*

UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } *ss:*

[Seal of the U. S. Circuit Court, W. D. Penn.]

Among the records of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, it is, *inter alia*, thus contained at No. 33, June term, A. D. 1882.

PHILIP DATER and ELIZABETH L. FELLOWS, both citizens and residents of the State of New York,

vs.

JANE HERRON and CHARLES D. HERRON, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B., citizens of the State of Pennsylvania: Charles J. Towar, a citizen of the State of Pennsylvania, and R. M. Cummings, a citizen of the State of Pennsylvania.

2 Summons in ejectment for part of a certain tract of land situate in Mt. Carmel township, Northumberland county, Pennsylvania, containing two hundred and thirty acres, or thereabouts. Issued April 24, 1882. Returnable the first Monday of June, 1882. *Præcipe* and description filed April 24, 1882.

May 11, 1882. Served the within summons in ejectment upon the within-named Jane Herron by leaving a true and attested copy at her residence, at Pittsburgh, Pa., with her husband, an adult member of the family; same day at same place served personally on the within-named Charles D. Herron, Elizabeth B. Jackson, and John A. Jackson by informing them of the contents and leaving with each of said parties a true and attested copy. May 15, 1882. Served upon the within-named Charles J. Towar by leaving a true and attested copy at his residence, Allegheny City, Pa., with an
3 adult member of his family. John Hall, U. S. M., per R. K. Campbell, dept'y. May 20, 1882. Served the within summons in ejectment upon the within-named R. M. Cummings personally and by copy. "So. ans." John Hall, U. S. M., per L. H. Martin, deputy. $17.28, paid by Sam'l Linn.

June 2, 1882. A. J. Dietrick, esq., appears for defendants and pleads "not guilty." Same day appearance and plea filed.

And now, September 21, 1882, this cause came on to be tried, and a jury of the country being called came, to wit, William W. Sterling, J. W. Thompson, H. J. Murdock, J. S. Wilson, James C. Acheson, John A. B. Patterson, Edwin Ketley, Levi Bird, Duff Reese, C. S. McCoy, Samuel C. Tussey, L. P. Fry, and James Barton, twelve good and lawful men of the western district of Pennsylvania, who, having been duly summoned, returned, balloted for, and empanelled, were severally sworn to try the issue herein joined.

And now, September 23, 1882, on motion of plaintiffs' at-
4 torneys, it is ordered that the description annexed to the *præcipe* in this case be amended by adding immediately after the

words "all that certain part of a certain tract of land situate in Mt. Carmel township, in Northumberland county," the words "and in Cunningham township, in Columbia county;" and, further, that the writ be amended so as to correspond with the aforesaid amendment to be made in the description in the *præcipe*. By the court.

And now, September 26, 1882, the said jury, upon their oaths aforesaid, respectively do say that they find a verdict in favor of the said plaintiffs and against the said defendants for the lands described in the writ, with six cents damages and six cents costs, and so say they all; same day filed charge of court, with exceptions of defendants thereto, duly sealed by the court.

Whereupon it is considered, adjudged, and decreed by our
5 said circuit court of the United States for the western district of Pennsylvania that the said plaintiffs do recover against the said defendants as well the land described in the writ for which this ejectment was brought as also their damages and costs, which they, the said plaintiffs, have sustained about this suit in this behalf adjudged to them by the said court aforesaid, and which damages and costs on the whole amount to the sum of one hundred and seventy-seven dollars and fifty-eight cents ($177.58).

And the said defendants in mercy, &c.

Judgment signed September 26, 1882.

B. S. BENTLEY, *Clerk.*

June 4, 1883. Writ of error to the Supreme Court of the United States issued. June 6, 1883. Writ allowed by M. W. Acheson, judge; same day, bond of Robert M. Cummings, principal, and A. J. Dietrick, Wesley Auten, and William Elliott, sureties, in the sum
6 of one thousand dollars, conditioned for prosecuting the writ of error taken in this case to the Supreme Court of the United States, with effect, &c., filed. June 6, 1883. Bond approved by M. W. Acheson, judge; same day, citation to Philip Dater and Elizabeth L. Fellows, defendants in error, to be and appear at the next term of the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October, 1883, filed. June 7, 1883. Service of citation accepted by Samuel Linn, att'y for pl'ffs below. See same. September 12, 1883. Bills of exception filed.

7 *Præcipe and Description.*

In the Circuit Court of the United States for the Western District of Pennsylvania. June Term, 1882.

PHILIP DATER AND ELIZABETH L. FELLOWS, both citizens and residents of the State of New York,

vs.

JANE HERRON AND CHARLES D. HERRON, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B., citizens of the State of Pennsylvania; Charles J. Towar, a citizen of the State of Pennsylvania, and R. M. Cummings, a citizen of the State of Pennsylvania. } No. 33.

Issue summons in ejectment against defendants to appear and

answer to a certain complaint made by Philip Dater and Elizabeth L. Fellows, both citizens and residents of the State of New York, that they, the said Jane Herron and Charles D. Herron, her
8 husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and R. M. Cummings, defendants; now have in there actual possession all that certain part of a certain tract of land situate in Mount Carmel township, in Northumberland county, in the said western district of the State of Pennsylvania, surveyed on the twenty-second day of October, 1794, in pursuance of a warrant granted to Lewis Walker, bearing date the twenty-sixth day of November, A. D. 1793, bounded and described as follows, to wit: On the south by lands surveyed on warrants to William Shannon and Peter Smith on the west by line running from the northeast corner of a survey made on warrant to Jesse Brooks; thence north eight and one-quarter degrees east to the southeast corner of land
9 surveyed on warrant to Thomas Billington; on the north by lands surveyed on warrants to Mary Ruston and Thomas Ruston, and on the east by lands surveyed on warrants to Nathaniel Brown, containing two hundred and thirty acres or thereabouts, the right of possession or title to which they, the said Philip Dater and Elizabeth L. Fellows, the plaintiffs, say is in them and not in them, the said defendants; all of which they, the said Philip Dater and Elizabeth L. Fellows, aver that they are prepared to prove, &c. Returnable at next term.

SAM'L LYNN.
I. W. RYAN.
JAMES RYAN.

10 Endorsed: No. 33. June term, 1882. Philip Dater and Elizabeth L. Fellows, both citizens and residents of the State of New York, *vs.* Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Chas. J. Towar, and R. M. Cummings. *Præcipe.* Filed April 24, 1882.

11 UNITED STATES, } *sct:*
Western District of Pennsylvania, }

The President of the United States to the marshal of the western district of Pennsylvania, Greeting:

We command you that you summon Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and R. M. Cummings, citizens of the State of Pennsylvania, late of your district, if they may be found therein, so that they may be and appear before the judges of the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, at a session of the same court to be holden at Williamsport on the first Monday of June next, then and there to answer a certain complaint made by Philip Dater and Elizabeth L. Fellows,

citizens and residents of the State of New York; that the said Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and R. M. Cummings now have in their possession actual all of that certain part of a tract of land situate in Mount Carmel township, Northumberland county, and State of Pennsylvania, surveyed on the twenty-second day of October, 1794, in pursuance of a warrant granted to Lewis Walker, bearing date the twenty-sixth day of November, A. D. 1793, bounded and described as follows, to wit: On the south by lands surveyed on warrants to William Shannon and Peter Smith; on the west by line running from the northeast corner of a survey made on warrant to Jesse Brooks, thence north eight and one-quarter degrees east to the southeast corner of land surveyed on warrant to Thomas Billington; on the north by lands surveyed on warrants to Mary Ruston and Thomas Ruston, and on the east by lands surveyed on warrants to Nathaniel Brown, containing two hundred and thirty acres, or thereabouts, the right of possession or title to which they, the said Philip Dater and Elizabeth L. Fellows, saith is in them and not in the said defendants; all of which said plaintiffs avers and are prepared to prove before our said court. Hereof fail not and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, at Williamsport, this twenty-fourth day of April, A. D. 1882, and in the one hundred and sixth year of the Independence of the said United States.

[SEAL.] B. S. BENTLEY, JR., *Clerk.*

12 [Endorsed:] No. 33. June term, 1882. Philip Dater *et al. vs.* Jane Herron *et al.* Summons in ejectment. Marshal's service, $15.00; mileage, $2.28—17.28. Paid by Sam'l Linn, Esq. Samuel Linn, J. W. Ryan, James Ryon, *P. Q.*

May 11, 1882. Served the within summons in ejectment upon the within-named Jane Herron by leaving a true & attested copy at her residence, Pittsburgh, Pa., with her husband, an adult member of the family; same day, at same place, served personally on the within-named Charles D. Herron, Elizabeth B. Jackson, and John A. Jackson by informing them of the contents and leaving with each of said parties a true & attested copy; and May 15, 1882, served upon the within-named Charles J. Towar by leaving a true and attested copy at his residence, in Allegheny City, Pa., with an adult member of his family. John Hall, U. S. marshal, per R. K. Campbell, dep'y.

May 20, 1882. Served the within summons in ejectment on the within-named R. M. Cummings personally and by copy. So ans. John Hall, U. S. M., per L. H. Martin, dep.

13 *Appearance and Plea.*

Circuit Court U. S., W. D. Penna. June Term, 1882.

PHILIP DATER *et al.*
vs.
JANE HERRON *et al.* } No. 33.

And now, June 2, 1882, I hereby appear for the defendants and plead not guilty.

A. J. DIETRICK.
Att'y for Defendants.

Endorsed: No. 33. June term, 1882. Philip Dater *et al. vs.* Jane Herron *et al.* Appearance and plea. Filed June 2, 1882.

14 *Order of Amendment.*

In the Circuit Court of the United States for the Western District of Penn. June T., 1882.

PHILIP DATER and ELIZABETH L. FELLOWS
vs.
JANE HERRON *et al.* } No. 33.

And now, the 23rd of Sept., 1882, on motion of pl'ff's attorneys, it is ordered that the description annexed to the *præcipe* in this case be amended by adding immediately after the words "all that certain part of a certain tract of land situate in Mt. Carmel township, in Northumberland county," the words "and in Cunningham township, in Columbia county," and further that the writ be amended so as to correspond with the aforesaid amendment to be made in the description in the *præcipe*.

By the court.

15 Endorsed: No. 33. June term, 1882. Philip Dater *et al. vs.* Jane Herron *et al.* Order of amendment of description, &c. Filed Sept. 23, 1882.

16 *Charge of Court.*

June Term, 1882.

PHILIP DATER *et al.*
vs.
JANE HERRON *et al.* } No. 33.

GENTLEMEN OF THE JURY: This is an action of ejectment, brought on April 24, 1882, by Philip Dater and Elizabeth L. Fellows against Jane Herron and other defendants named in the writ for a tract of land situated partly in Northumberland county and partly in Columbia county, in the western district of Pennsylvania, and containing about 230 acres. For the most part the land lies in Northumberland county, a small corner only, consisting of about 7 or 8 acres, lying within Columbia county. The land in controversy is part of

a tract of 371¼ acres, designated during the trial as the
17 "Lewis Walker tract," having been surveyed on the 22nd of October, 1794, upon a warrant issued to him.

The plaintiffs put in evidence a certified copy of an ancient paper, dated Nov. 26, 1793, on file in the land office, designated as "old purchase voucher No. 12969," and in connection therewith a certified copy of an entry, under date of June 14th, 1794, from the "old purchase blotter" in the land office. These documents were offered to show, and they are evidence tending to show, that Dr. Thomas Ruston was the owner of the Lewis Walker warrant and paid to the Commonwealth the purchase-money for said tract of land.

An exemplification of a record of the circuit court of the United States for the then district of Pennsylvania (in evidence) shows that on October 13th, 1796, James Clayland, for use, obtained a judgment in that court against Dr. Thomas Ruston, which was after-
18 wards revived and such proceedings had thereon that, in pursuance of a writ of execution (vend. exp.), John Smith, the United States marshal, on August 15, 1803, sold the said tract of land, as the property of the defendant, Dr. Thomas Ruston, to Nicholas Lefevre, to whom the marshal, on October 11, 1803, executed a deed, dated and acknowledged on the date last mentioned.

The plaintiffs have shown that by sundry mesne conveyances the title to which Nicholas Lefevre thus acquired became vested in them prior to the bringing of this action.

In connection with their paper title the plaintiffs gave evidence tending to show that for many years they and those under whom they claim asserted title to the land and paid taxes thereon without any hostile claim being set up against them until the year 1875, when the defendants took possession.

If the evidence on the part of the plaintiffs is believed by
19 the jury it makes out a *prima facie* case for the plaintiffs, and they are entitled to your verdict upon this branch of their title.

In order to simplify the case (and by agreement of the counsel of the respective parties) I instruct you to disregard and throw out of the case altogether the evidence which relates to the distinct title which the plaintiffs set up under the tax sale to Charles Pleasants.

Endorsed: No. 33. June term, 1882. Philip Dater *et al. vs.* Jane Herron *et al.* Charge of the court. Filed Sept. 26, 1882.

20 *Exceptions to Charge of Court, &c.*

In U. S. Circuit Court, W. D. Pa. June T., 1882.

PHILIP DATER *et al.*
vs.
JANE HERRON *et al.* } No. 33.

Before verdict — rendered counsel for defendants except to the following parts of the charge of the court to the jury:

"The plaintiffs put in evidence a certified copy of an ancient paper dated Nov. 26th, 1793, on file in the land office designated as

old purchase voucher No. 12969, and in connection therewith a certified copy of an entry under date of June 14th, 1794, from the old purchase blotter in the land office. These documents were offered to show, and they are evidence tending to show that Dr. Thomas Ruston was the owner of the Lewis Walker warrant and paid to the Commonwealth the purchase-money for said tract of
21 land.

Also the following parts of said charge:

"The plaintiffs have shown that by sundry mesne conveyances the title which Nicholas Lefevre thus acquired became vested in them prior to the bringing of this action. In connection with their paper title the plaintiffs gave evidence tending to show that for many years they and those under whom they claim asserted title to the land and paid taxes thereon without any hostile claim being set up against them until the year 1875, when the defendants took possession. If the evidence on the part of the plaintiffs is believed by the jury it makes out a *prima facia* case for the plaintiffs and they are entitled to your verdict upon this branch of their title."

And thereupon the court seal this bill of exceptions to the said portions of the charge.

M. W. ACHESON.

22 Endorsed: No. 33. June term, 1882. Philip Dater *et al.* *vs.* Jane Herron *et al.* Exceptions to charge of court and bill. Filed Sept. 26, 1882.

23 *Plaintiffs' Bill of Costs.*

In the Circuit Court of the U. S for the Western Dist. of Penna.
June T., 1882.

PHILIP DATER *et al.*
vs.
JANE HERRON *et al.* } No. 33.

George A. Herring	56 miles	5 60	
	4 days	6 00	
			11 60
Edward Davis	68 miles	6 80	
	6 days	9 00	
			15 80
John P. Casey	56 miles	5 60	
	8 days	12 00	
			17 60
A. B. Cochran	117 miles	11 70	
	9 days	13 50	
			25 20
Harley Datesman	40 miles	4 00	
	7 days	10 50	
			14 50
John E. Rathbun	200 miles	20 00	
	8 days	12 00	
			32 00
			$116 70

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Samuel Linn, att'y for above-named plaintiffs, being duly
24 sworn according to law, doth depose and say that the above bill of costs is correct to the best of his knowledge and belief; that the witnesses therein named were in attendance and were necessary, as deponent believes, to maintain the plaintiffs' action.

SAM'L LINN.

Sworn and subscribed before me this 6th day of Oct., A. D. 1882.

B. S. BENTLEY, *Clerk.*

Endorsed: No. 33. June T., 1882. Philip Dater *et al vs.* Jane Herron *et al.* Pl'ffs' bill of costs. Filed Oct. 6, 1882.

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court for the western district of Pennsylvania, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Philip Dater and Elizabeth L. Fellows, plaintiffs, and Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Tower, and R. M. Cummings, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 4th day of June, A. D. 1883.

[Seal of the U. S. Circuit Court, W. D. Penn.]

B. S. BENTLEY,
Clerk U. S. Circuit Court, Western District Pennsylvania.

Allowed by—

M. W. ACHESON, *U. S. Judge.*

June 6th, 1883.

26 [Endorsed:] No. 33. June term, 1882. Philip Dater and Elizabeth L. Fellows *vs.* Jane Herron *et al.* Writ of error.

27 *Bond.*

In the Supreme Court of the United States. Writ of Error to the Circuit Court of the United States, West. Dist. of Pennsylvania, of No. 33. June Term, 1882.

PHILIP DATER and ELIZABETH L. FELLOWS
vs.
JANE HERRON and CHARLES D. HERRON, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and R. M. Cummings.

Know all men by these presents that we, Robert M. Cummings, of Northumberland county; A. J. Dietrick, of Luzerne county; Wesley Auten and William Elliott, of Northumberland county, Pennsylvania, all of the State of Pennsylvania, in said district, are held and firmly bound unto Philip Dater and Elizabeth L. Fellows in the sum of one thousand dollars, to be paid to the said Philip
28 Dater and Elizabeth L. Fellows, their heirs, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each one of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 4th day of June, A. D. 1883.

Whereas lately, at a circuit court of the United States in and for the western district of Pennsylvania, in a suit depending in said court between Philip Dater and Elizabeth L. Fellows, plaintiffs, and Jane Herron and Charles D. Herron, her husband; Elizabeth B. Jackson and John A. Jackson, her husband; Charles J. Towar, and R. M. Cummings, defendants, judgment was rendered against the said Jane Herron and Charles D. Herron, her husband; Elizabeth B. Jackson and John A. Jackson, her husband; Charles J. Towar, and R. M. Cummings; and the said defendants having obtained a writ of error to the Supreme Court of the United States to re-
29 verse the said judgment in the aforesaid suit and a citation directed to the said Philip Dater and Elizabeth L. Fellows, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Jane Herron and Charles D. Herron, her husband; Elizabeth B. Jackson and John A. Jackson, her husband; Charles J. Towar, and R. M. Cummings shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then the above obligation to be void; else, to remain in full force and virtue.

ROB'T M. CUMMINGS. [SEAL.]
A. J. DIETRICK. [SEAL.]
WESLEY AUTEN. [SEAL.]
WM. ELLIOTT. [SEAL.]

Sealed and delivered in presence of—
SAMUEL P. FAUSOLD,
As to R. M. Cummings & Wesley Auten.
E. K. BRIGHT,
As to Wm. Elliott.

30 Endorsed: No. 33. June term, 1883. Philip Dater and Elizabeth L. Fellows *vs.* Jane Herron *et al.* Bond. And now, to wit, June 6, 1883, the within bond for costs approved. M. W. Acheson, U. S. judge. Filed June 6, 1883.

31 *Citation.*

In the Supreme Court of the United States. Writ of Error to the Circuit Court of the United States, Western District of Pennsylvania, of No. 33. June Term, 1882.

PHILIP DATER and ELIZABETH L. FELLOWS
vs.
JANE HERRON and CHARLES D. HERRON, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and R. M. Cummings.

The United States of America, greeting, to Philip Dater and Elizabeth L. Fellows:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error
32 filed in the clerk's office of the circuit court of the United States for the western district of Pennsylvania, wherein Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and R. M. Cummings are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. W. Acheson, judge of the circuit court of the United States for the westerr district of Pennsylvania, this 6th day of June, A. D. 1883.

M. W. ACHESON.

I do hereby accept service of the within citation for Philip Dater and Elizabeth L. Fellows.
June 7, 1883.

SAM'L LINN,
Att'y for Pl'ffs below.

33 Endorsed: No. 33. June term, 1882. Philip Dater and Elizabeth L. Fellows *vs.* Jane Herron *et al.* Citation. Filed June 6, 1883.

34 *Bills of Exception.*

In the Circuit Court of the United States for the Western District of Pennsylvania. June Term, A. D. 1882.

PHILIP DATER and ELIZABETH L. FELLOWS
vs.
JANE HERRON and CHAS. D. HERRON, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Chas. J. Towar, and R. M. Cummings. } No. 33.

(Ejectment.)

Be it remembered that in June sessions, A. D. 1882, No. 33, came Philip Dater and Elizabeth L. Fellows in the circuit court of the United States for the western district of Pennsylvania, and impleaded Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and Elizabeth
35 Cummings, in a certain plea or action of ejectment in which the said plaintiffs declared that the said defendants had in their possession actual all that certain part of a tract of land situate in Mt. Carmel township, Northumberland county, and Conyngham township, Columbia county, and State of Pennsylvania, surveyed on the 22d day of October, A. D. 1794, in pursuance of a warrant granted to Lewis Walker, bearing date the 26th day of November, A. D. 1793, bounded and described as follows, to wit: On the south by lands surveyed on warrants to William Shannon and Peter Smith; on the west by line running from the northeast corner of a survey made on warrant to Jesse Brooks; thence north eight and one-fourth degrees east to the southeast corner of lands surveyed on warrant to Thomas Billington; on the north by land surveyed on warrants to Mary Ruston and Thomas Ruston, and on the east by land surveyed on warrant to Nathaniel Brown, containing two hundred and thirty acres or thereabouts.

36 The right of possession or title to which said tract of land they, the said Philip Dater and Elizabeth L. Fellows, aver-ed was in them and not in the said defendants.

To which said complaint the said defendants plead as follows:

And now, June 2d, I hereby appear for the defendants and plead "not guilty."

A. J. DIETRICK,
Att'y for Defendants.

And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the city of Williamsport, in the said western district of Pennsylvania, before the Honorable M. W. Acheson, one of the justices of said court, on Thursday, the 21st day of September, A. D. 1882, issue between the said parties came to be tried by a jury of the said district for that purpose duly empaneled as follows:

37
1. William W. Sterling.
2. J. W. Thompson.
3. H. J. Murdoch.
4. J. S. Wilson.
5. J. C. Acheson.
6. John A. B. Patterson.
7. Edwin Ketley.
8. L. B. D. Reese.
9. C. F. McCoy.
10. Samuel C. Tussey.
11. L. P. Fry.
12. James Barton.

At which day came as well the said plaintiffs and the said defendants, by their respective attorneys, and the jurors of the jury aforesaid empanelled to try the said issues being also called came and were then and there in due manner chosen, sworn, or affirmed to try the said issue, and upon the said trial the following proofs and testimony *was* introduced and offered to be introduced, and the following rulings of said court *was* thereon respectively made.

Counsel for the plaintiffs offer in evidence—

1. Writ of ejectment. No. 33. June term, 1882. Philip
38 Dater and Elizabeth L. Fellows *vs.* Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Towar, and R. M. Cummings for all that certain part of a tract of land situate in Mt. Carmel township, Northumberland county, and Conyngham township, in Columbia county and State of Pennsylvania, surveyed on the 22nd day of October, 1794, in pursuance of a warrant granted to Lewis Walker, bearing date the 26th day of November, 1793, bounded and described as follows, to wit: On the south by lands surveyed on warrants to William Shannon and Peter Smith; on the west by line running from the northeast corner of a survey made on warrant to Jesse Brooks; thence north eight and one-quarter degrees to the southeast corner of land surveyed on warrant to Thomas Billington; on the north by land surveyed on warrants to Mary Ruston and Thomas Ruston, and on the east by land surveyed on warrant to Nathaniel
39 Brown, containing two hundred and thirty acres, or thereabouts.

2. Certified copy of application No. 12969. William Elliott applies for four hundred acres of land on a branch of Roaring creek, adjoining Dr. Thomas Ruston's lands in Catawissa township, Northumberland county.

Joseph Tyson applies for four hundred acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other land in Catawissa township, in North'd county.

William Shannon applies for four hundred acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining other lands of Dr. Thomas Ruston in Catawissa township, North'd county.

Lewis Walker applies for four hundred acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other lands in Catawissa township, North'd county.

40 Nathaniel Brown applies for four hundred acres of land on a branch of Roaring creek, adjoining Dr. Thomas Ruston's lands, in Catawissa township, North'd county.

Ebenezer Branham applies for four hundred acres of land on a branch of Roaring creek, adjoining Dr. Thomas Ruston's lands, in Catawissa township, North'd county.

26 November, 1793.—3d. Certified copy of old purchase voucher No. 12969. Joseph Tyson, 400 a's lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other land, in Northumberland county.

William Elliot—400 a's situate on a branch of Roaring creek, adjoining Dr. Thomas Ruston's other land, in Catawisia township, —said county.

Lewis Walker—400 a's lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other land, in said county.

William Shannon—400 a's lying one mile north of a road
41 leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other lands, in said county.

Ebenezer Branham—400 a's on a branch of Roaring creek, joining Dr. Thomas Ruston, in said county.

Nathaniel Brown—400 a's on a branch of Roaring creek, joining land of Dr. Thomas Ruston, in said county.

Amount, £60—interest from date hereof.

[On the side]: A gen'l rec't wrote.

Plaintiff's counsel offer—

4th copy of old purchase blotter No. 12969.

1794, June 14.—Dr. Ruston 6 w'r'ts of 400 a's am't, 2,400 a's, 50 p. c't p'd, specie ch., £60.

Fees, 6%, p'd; rem'r charge of 168 D^{s}. Rec't D^{p}.

Offered for the purpose of showing title in Thomas Ruston to the Lewis Walker tract in dispute

Counsel for defendant object because the warrant issued to
42 Lewis Walker, dated 26th November, 1793, a payment of purchase-money by Dr. Ruston without the consent of the warrantee would give him no title. Title accrued to Lewis Walker on 26 of November, 1793. A payment of purchase-money by Dr. Ruston on June 14, 1794, would give him no title. If any title whatever accrued to Dr. Ruston it would be but a resulting trust; also because the counsel for the plaintiffs do not propose to follow it with any evidence showing a conveyance of the legal title to Dr. Ruston or those claiming under him, or any possession of the land by him or them or the bringing of any action of ejectment to recover it within twenty-one years from the date of the warrant.

Objections overruled, evidence admitted, and bill sealed at the request of the counsel for defendants.

M. W. ACHESON.

43 *Plaintiffs' Offer.*

Warrants dated 26th November, 1793, to William Elliot, for four hundred acres adjoining Cadwalader Evans'.

Survey to William Elliot, 22d of October, 1794, three hundred — sixty-eight acres and allowance, adjoining on the east Lewis Walker; north, John Reynolds, Mary Myers, Daniel Reese, and others, and on the west Joseph Tyson.

Copy of warrant to Joseph Tyson, dated 26th November, 1793, for four hundred acres, one mile north of a road leading from Reading to Sunbury, adjoining Dr. Ruston's other land.

Copy of survey, 22d of October, 1794, to Joseph Tyson, for four hundred and fifty-three acres and allowance, adjoining William Elliot and others.

Copy of warrant to Lewis Walker, dated 26th November, 1793, for four hundred acres, adjoining Dr. Thomas Ruston's other lands.

44 Copy of survey for Lewis Walker, dated 22d October, 1794, — three hundred and seventy-one and one-fourth acres, adjoining Nathaniel Brown on the east; Thos. Ruston, Mary Ruston, and others on the north; west, William Elliot; on the south, Jesse Brooks, Dr. Thomas Ruston, in right of William Shannon.

Copy of warrant to William Shannon, dated 26th November, 1793, one mile north of the road leading from Reading to Sunbury, for four hundred acres, Catawissa township, said county, adjoining other lands of Dr. Thomas Ruston.

Copy of survey, 22d October, 1794, to William Shannon, — four hundred and fifteen acres and allowance, adjoining on the north Lewis Walker, on the east by Peter Smith, on the south by William Gilbert, on the west — Jesse Brooks.

Copy of warrant to Nathaniel Brown, dated 26th November, 1793, for four hundred acres in Catawissa township, said county.

Copy of survey dated 21st October, 1794, for Nathaniel
45 Brown, for four hundred acres and allowance.

Copy of warrant to Ebenezer Branham, dated 26th of November, 1793, for four hundred acres in Catawissa township, said county, on a branch of Roaring creek, adj. land of Dr. T. Ruston.

Copy of survey, dated 21st October, 1794, for Ebenezer Branham, four hundred and one-fourth acres, adjoining Nathaniel Brown on the west, Thomas Ruston, in right of Lewis Walker, on the south, Samuel Lobdell, Daniel Rees, and others on the north.

Plaintiffs also offer return of William Gray, deputy surveyor, of four tracts—February 23, 1795: William Elliot, three hundred and sixty-eight acres; Lewis Walker, three hundred and seventy-one and one-half acres; William Shannon, four hundred and fifteen acres; Nathaniel Brown, four hundred acres.

Also, certified connected draft of 20 tracts, including the
46 above, certified the 3d of March, 1875.

Also, exemplification of record from the United States court, eastern district of Pennsylvania, No. 44, April term, 1796. James Clayland, for the use of John Gibson, *vs.* Thomas Ruston. Sum-

mons, 20th April, 1796. October 13, 1796, judgment for £3,735 8*s.* 4½*d.* *Fi. fa.* issued; returned "*nulla bona.*" *Sci. fac.*, May, 1801. Judgment, by consent, $19,922.21. *Venditioni exponas* issued; returned by the marshal sold, 15th August, 1803 (*inter alia*), Lewis Walker tract, three hundred and seventy-one and one-fourth acres.

In Debt.

In the Circuit Court of the United States, Eastern District of Pennsylvania. April Sessions, 1796.

JAMES CLAYLAND, to the use of John Gibson,
versus
THOMAS RUSTON. } No. 44.

October 13, 1796.—Judgment for $19,922.21, per agreement, filed.

47 1797, Aug. 31st.—*Exit fi. fa.*
Real debt, £3,735 8*s.* 4½.
1798, April 10.—*Exit alias fi. fa.*
Returned "*nulla bona.*"

Judgment.

JAMES CLAYLAND, use of John Gibson, *vs.* THOMAS RUSTON.

Stay of 60 days absolutely. Execution not to be taken out for the several sums mentioned in the condition of the bond till such time as the said sums respectively become due. If the defendant swears to a defence within 60 days this judgment is to be opened.

WM. TILGHMAN,
For Pl'ff.
CHAS. HEALTRY,
For Deft.

Filed 13 Oct., 1796.

Revival.

In the Circuit Court of the United States for the Eastern Dis-
48 trict of Pennsylvania, in the Third Circuit. October Sessions, 1801.

JAMES CLAYLAND, for the use of John Gibson,
vs.
THOMAS RUSTON. } No. 13.

Sci. fac. to renew. Org. 44. Ap'l, 1796. *Exit* 31 July, 1801.

1801, Oct. sess.—Ret. served.
1802, Ap'l 7.—Rule for trial.
1802, May 11.—Judgment for pl'ff by consent, with six weeks' stay of execution.
Real debt, $9,961.00.
Int. from 10 Oct., 1794.
Aug. 30.—*Exit fi. fa.* Ret. "*nulla bona.*"
1803, Ap'l 6.—*Exit alias fi. fa.* Post *sci. fac.*
1803, May 24.—*Vend. exp.* Post *scire facias.*
Oct. sess.—*Vend. ex.* Returned money made $1,357.85.

The execution of this writ appears by the annexed return. So answers.

JNO. SMITH, *Marshall.*

Ret'd 6 July, 1804.

Marshal's Return (Extract).

49 No. 216. One other tract in the name of Joseph Tyson, containing 453 acres, lying one mile north of a road leading from Reading to Sunbury, adjoining Doct. Ruston's and other lands in Northumberland county, granted per warrant 26th Nov., 1793, sold to Nicholas Lefavre at the price of 3½ cents per acre, $15.85.

217. One other tract in the name of William Elliot, containing 368 acres, on a branch of Roaring creek, adjoining Doctor Thomas Ruston's [and] other lands in Catawissa township, granted per warrant of same date, sold to Nicholas Lefavre, at 3 cents per acre, $11.04.

218. One other tract in the name of Lewis Walker, containing 371¼ acres, lying one mile north of road leading from Reading to Sunbury, adjoining Doctor Thomas Ruston's in said county, granted per [warrant] of the same date, sold to Nicholas Lefevre at 4 cts. per acre, $14.85.

50 219. One other tract in the name of William Shannon, containing 415 acres, lying one mile north of a road leading from Reading to Sunbury, in said county, granted per warrant of same date, sold to Nicholas Lafavre for 3½ cents per acre, $14.52.

No. 220. One other tract in the name of Nathan'l Brown, containing 400 acres, on a branch of Roaring creek, adjoining land of Doctor Thomas Ruston in said county, granted per warrant of same date, sold to Nicholas Le Fevre for 6 cents per acre, $24.

Amounting in all to $398.26 purchased by N. L.

Amount of John Gibson's purchase		$1,094	98
Do	Nicholas Lefevre "	398	26
Do	Rebecca Robbins "	18	
Do	Hugh Ferguson "	4	50
Do	Alexander Cook "	40	
		$1,555	74
51 Amount of John Reed's purchase		255	00
		$1,810	74

Charges, to wit:

Costs taxed by cl'k	$37	40
Execution of writ, return, &c., of sale	3	73
Commission	30	16
Israel Printing Co.	11	
Crying sale	5	
Duanne, printer, advertising	118	75
Taxes	16	85
Coffee-room	10	00

Inquisition, *fi. fa.*, return jury, jury, & c'ts	$ 9 06	
Poulson, printing	63 75	
Rilf, do.	4 67	
Adjourning sale	2	
Daniel Dimmick, taxes, Wayne Co.	116 49	
John Boyd, do., North'd Co.	24 03	
		452 89
		$1,357 85

Which sum of one thousand three hundred and fifty-seven dollars and eighty-five cents I have to render to the plaintiff, as within I am commanded.

So answers— J. W. SMITH,
Marshall.

52 Deed—John Smith, marshal*l*—dated 11th October, 1803, to Nicholas Le Favre for the Lewis Walker tract, three hundred and seventy-one and one-fourth acres; also including Joseph Tyson, 453 acres; William Elliot, 368 acres; William Shannon, 415 acres; Nathaniel Brown, 400 acres. Deed acknowledged 11th Oct., 1803, and recorded in deed book "B," pages 14, 15, 16, 17, 18, in the clerk's office of the United States court, eastern district of Pennsylvania.

Plaintiffs also offer—

Certified copy of will of Nicholas Le Favre, deceased, dated 21 day of Feb'y, 1815. Will probated 12th of August, 1815, with annexed schedule of lands in Northumberland and other counties, among them the Lewis Walker tract, 371¼ acres, with letters of administration *cum testamento annexo* dated 15th of August, 1815, to Wm. R. Smith, of Huntingdon, Pennsylvania; all the property of testator devised to his wife and two daughters.
53

Copy of Will.

In the name of God, Amen; Father, Son, & Holy Ghost. I, Nicholas La Favre, formerly of Stillorgan, in the county of Dublin, Ireland, but of late years of the city of Philadelphia, North America, being of sound mind and memory, for which I return humble & grateful thanks to my God, knowing the uncertainty of the time when we shall be called to our last great account & fearful to delay longer to dispose of my worldly estate, I do hereby bequeath to my beloved wife, Ann, and to my two daughters, Maria & Margaret, all my several properties, real, personal, and mixed, of whatever nature or kind or wheresoever found. A list of the lands I shall hereunto annex, and such items of or relating to my other properties as I find to aid them in being known or as my memory shall best recollect. The first of — lands will be found situate & lying in the counties of Huntingdon, Centre, Mifflin, Wayne, Somerset, Lycoming, Northumberland, and Fayette, all in the State of Pennsylvania — quantities more or less, as may be seen by reference to the said annexed list; also thirty-four acres of land in Montgomery
54

county, in the State of Georgia; eleven thousand five hundred & sixty-four acres in Orangeburg district, South Carolina, and one thousand acres in Moore county, North Carolina; as also my claim on the American Government for five hundred thousand acres, being the moiety of one million acres situate on the Mobile river, in the State of Georgia, commonly called the Yazoo claim, & which is the only property I own purchased from Jo. Barrett, of Boston, all the other properties having been purchased
55 by me and paid for, except —; and, further, I bequeath to my said wife and daughters my small estate—p'r simple house & garden, 4 acres & right of commonage—in the county of Surrey, England, about 22 miles from London, which I purchased at a public sale — Garrawary's coffee-house in 1800, & paid for. The deeds are in the hands of Mr. Smith, the auctioneer, to whom I paid the purchase-money & who advised —. I left him permission to sell, & thereby avoid extra transfers & expense, as I was going to America; as also all my properties and claims in Ireland, England, & the East Indies (the last means my demand of £1,399 10s. 4-. for interest due by M. Gilaham against him since the year 1793, when he was one of the Bank of England directors); also all debts due *by* me by Edward Kent on his own account or as ex'r to his brother, the late George Kent, & the said George Kent by his book
56 debt & his legacy to me of three hundred pounds, & for money lent him by me in his lifetime to a large amount, which I understand the said Edward Kent, with a wickedness & ingratitude peculiar to himself, hath, by every trick & litigu*o*us effort, prevented my family receiving, but also has, by means most singular & unprecedented, seized in my absence on part of my real estate, & taken steps, by surrounding the same by a fence, to make it one day his own. However, I trust my case & my famili*e*s to the laws of my country, & to that Being who, in the course of time, pulls to the ground the man of ingratitude and wicked will.

The debt due me by —— Nugent, Esq., of the County Cavan, by bond & warrant, on which execution was issued, I think, prior to my leaving home in 1798, & *and* all other debts in Ireland, England, & elsewhere to my aforesaid three dear relations, and my most
57 excellent wife & my daughters, Maria & Margaret, who never in a single instance disobeyed me. May God in His mercy forever bless them.

I make as a part of my will that the debt due by me to Wm. R. Smith, Esq., counsellor-at-law of Huntingdon town, in the State of Pennsylvania, to whom my obligations can never be repaid, be first paid the debt due by me to him at the time of my decease out of the next sale or sales following the same. His generous holding to me in times the worst was unbounden, &, but that he is rich as he is good, I would largely set him down in this my will. However, as it is I hereby will and order that on all sale or sales of my several properties in America that shall take place from and after my death he shall be allowed & he is hereby authorized to deduct & re-
58 tain — p'r cent from the gross amount of such sale or sales; and further — p'r cent. on the proceeds he shall remit in good

& safe bills to my wife and two daughters aforesaid, or the survivor of them, as the case may be, taking from them or the survivor proper receipts from time to time; and in case of the death of my wife & daughters then I will the whole I have willed to them to the children of Maria or of Margaret, or both, forever, share & share alike. Dearest and most beloved of my heart, farewell.

N. Le FAVRE.

At Philadelphia 21st February, 1815—fifteen.

In Huntingdon county. Four tracts in Sinking Valley.

Philip Carr 406,149
Wm. Carr 405,156
Rob't Stewart 424,119
Jacob Wood 449,159

Centre county. Seven tracts in Big Bald Eagle Valley.

Charles Canady 412.10
Jane Kane 412.10
John Banon 412.10
59 And'w Sommers 412.10
Peter Sommers 412.10
Martin Sommers 402.48
Mary Sutter 402.48
On Trough creek Isaac Harton 402.48
Elizabeth Hartrock 400.48

On Trough creek the patent with Wm. R. Smith, Benj. R. Morgan, his words to N. Lafavre.

Mifflin county, one tract.
Robert Thompson 206 in Greenwood.

This measured on a resurvey by Monegham but 149 acres. This tract is near Millerstown, Kit Coxe resides on it by permission of N. L. Favre.

Township adjoining Jas. Rigar & Edw. McConely, on the waters, Cockelamus creek, 4 miles ¾ from Millerstown. La Favre has title deeds and patent.

He should be settled with and placed on the lands, say as a purchaser, at $10 an acre, to pay- of prin. and interest by $100 a year.

Mifflin county continued. 8 tracts.

Peter Swinehart 400
John Ruip 400
Jas. Swift 400
Peter McCoy 400
John Ray 400
Peter Ray 400
Jacob Ruip 400
J. John Swift 400
60 Nathaniel Brower 400
John Milligan 400
John Caully 400
Joseph McCoy 400
Ham. Graham 400
John McGee 400
Rob't Hogge 400
John Rubert 400

Mifflin County.

Marshal's No. 1	Warrantees' names.	Quantity.	Warrant.	Surveyed.
169	Thos. Ruston	416½	10 Aug., 1793	Dec., 1793
170	R. Irwin	436.51	" "	"
171	Wm. Harrison	436.51	" "	"
172	Thos. Castairs	436.51	" "	"
175	John Crage	405	" "	"
177	Adam Dar	438½	" "	Jan., 1794
178	Philip Dar	432.15	" "	"
179	George Dar	403.137	" "	"
180	John Dar	391½	" "	"
181	Peter Dar	426¼	" "	"
182	James Blair	440	" "	"
183	Patrick Blair	423.110	" "	"
184	John Blair	440	" "	"
61				
185	Wm. Gilmore	423.110	" "	"
190	Rob't Dunken	426½	" "	"
191	Wm. Boyd	438½	" "	"
192	John Harvey	409.115	" "	"

These are the 17 tracts that the villain, Wm. Williams, swindled me out of. He paid by bills of R. House in Havana on London. Acceptors' and endorsers' names were forged. I lost the above 17 tracts, which I could have afterwards sold at vendue for cash, in Baltimore, at 66⅔ per acre; besides that I had loaned to the said Williams, as a difference or balance, $300 & $16—change he owed me, but never repaid.

Mr. Reynolds has named $100 & expenses to surrender the eleven tracts he holds. I have in return requested he would save what the expenses would amount to. He has never given to me an answer to this question.

62 Wayne county (now Pike, formerly Northampton).

Daniel Broadhead, Jr.	400	Survey of this tract not returned to the land office. See my letter to Sam'l D. Frank, Esq.
Isaac Jayne	324	
Caty Brumall	424.55	
Wm. Jayne	400.155	
John Sanders	402¾	
Rich'd Horton	407.35	
Wm. Bursley	422½	
Tabithy Horton	422	
Joseph Heaton	368.130	
John Jayne	400.150	
Henry Namohy	410.60	
Richard Lewis	436.13	

Solomon Cassabalt 417.112
Jacob Winnings 424.80
Philip Place ..... $\frac{125}{465}$ 409

The taxes of the above paid up to the year 1814, included. They must be at all times paid up or the commissioners will sell them off, which will cause injury and heavy loss. The map of this county is in my possession, & each tract can be found, as it is divided,
63 each tract numbered, & by looking at the printed index reference at once can be had.

Somerset county (formerly Bedford).

Acres.	Names of warrantees.	Township.
400½	Silas English	Southampton.
404¾	Cæsar A. Rodney	Alleghany.
404¾	John Can	" Southampton.
398½	Isabella Somerville	Elk Lick.
399¼	Conrad Wyman	Southampton.
408	George Wyman	" Alleghany.
402	Catharine Wyman	do.
399¼	Alex'r Adams	do.
402	Wm. Coombs	Southampton.
427¾	Wm. Brown	do.
420½	Sarah Finnamore	Alleghany.
375½	Mary Wadman	Southampton.
429¾	Ann Wadman	do.
467½	Thos. S. Armstrong	Alleghany.
442½	John Renshaw	Elk Lick.
439¾	Mary Vandyck	Southampton.
437	Bertha Young	do.
422¼	Isaac Cutnall	Alleghany.

64 The warrants bearing date 19 July, 1793, surveyed in August, &c., 1794.

Somerset (late Bedford) county.

337¼	Samuel Dunlap.
394¾	John Somerville.
416½	George Hafner.
417¾	Wm. Allbricks.
367¾	Susanah Brown.
416¼	Thos. Cave.
440	James Tate.
406	Adam Brittle.
434	Mary Simpson.
401¾	Richard Currie.
404¾	James Gregory.
422	Mary McBride.
420¾	Rachel Tempest.
439	Adam Esler.
394¼	Arthur St. Clair.

6,112¾

The warrants dated 19 July, 1793, surveyed in March, &c., 1794.

65 Lycoming County (formerly Northumberland).

Warrantees' Names.	Quantities.	Situation.
Wm. Ellis	385.5	On the south side of the west branch of the Susquehanna, in Washington township. Warrant dated 27 Ap'l, 1792; surveyed 11 Oct., 1793.
	100	In Black Hole Bottom, on which one Moses Hood now resides, in Muncy township. Find the warrantee's name from Wm. Hollingsworth.
George Long	301.150	On a branch of Mill creek, in Muncy township, in Lycoming county. Warrant 27 Ap'l, 1792; surveyed 7 Oct., 1792.
James Long	399.9	Adjoining ditto tract & others. Warrant 27 Ap'l, 1792; surveyed 7 Oct., 1792.
*Elizabeth Hillzheimer	400½	In Muncy township, 190.
Hannah Hillzheimer	438	Adjoining " " 191.
Fred'k Beates	438	" " 192.
John Parker, Jr.	400¼	" " 193.
John Parker, Jr.	377	" " 194.
Elizabeth Beck, Jr.	421½	" " 195.

These the marshal's numbers; see his deed poll.

*These six tracts are of the 56 assigned by Jos. Maitland.

66

†James Morril	436	Adjoining township, 185.
Wm. Gardner	420	" " 186.
Wm. Jones	399	" " 187.
John Swope	400¼	" " 188.
Mary Hiltzeimer	400	" " 189.

†These five I late bought from J. Maitland.

The warrants dated 22d March, 1793.
Surveyed in August, 1794.

Northumberland County.

Marshal's No.		
210.	Joseph Tyson 453.	On a branch of Roaring creek, Catawissa
217.	William Elliott 368.	"
218.	Lewis Walker 371½.	"
219.	Wm. Shannon 415.	"
221.	Nath'l Brown 400.	"

Warrants dated 26th Nov., 1793.
Surveyed in Oct., &c., 1794.

Abram Scott, 344½, in Shamokin township, who vests in Dean, who sells to N. Le Favre, Northumberland county.

Warrant dated 5 Dec., 1793.
Surveyed 7 Dec., 1802. Patent, &c., in my hands.

67 Fayette County.

Simon Truby	402	In Bullskin township on Green & Salt Lick creek.
Peter Dick	416	
John Dugan	400	Ditto.
John Douglass	393½	Poplar Run, branch of do.
Simon Douglass	404¾	Mount Creek.
Wm. Douglass	413	Green Lick & Salt creek.
James Dugan	412	Adjoining Js. & Simon Truby's land.
Andrew Douglass	435½	Mount creek.
James Truby	403¾	Salt Lick creek.
Wm. Dugan or Dyan	413	Mount creek.

Note.—The above 10 tracts were among the first assignment of the 56 tracts.
Dated 9th February, 1807.

Wm. Douglass	404¾	is the one held by Col. Isaac Mason.
Simon Truby	402	" " John Lyon.
James Truby	403¾	" " Do.

The following ten tracts are of the late purchase made of Jos. Maitland for $1,000, say in May last, 1814, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. Wm. R. Smith will find the warrantees' names and quantities in the deed (parchment) he took last with him to send to Uniontown to get recorded, and he will do well to be careful of his
68 sending it by a safe hand, so as to get it back to himself to place the names to the lines above. Though L. F. has the names somewhere, he cannot at this moment find them, & he *he* cannot *beareas* to retain this paper, having promised Mr. Smith to forward to him the entire N. L. F.

PHILADELPHIA, 23 *February*, 1815.

David Allison 1,000.	Moore county, North Carolina, one tract patent. The originals.
Elias Bates 11,654.	In Orangeburg district, South Carolina, 12 plats or grants. The originals.
James Shorter 34,000.	County of Montgomery, in the State of Georgia. Remarks on the above.

The letter of Moultrie, Esq., formerly att'y gen'l of Georgia, brother to the commodore, is the best document the present proprietor has to satisfy engineers, & from the excellent and honest character of the writer there could scarcely be a better. A letter in 1814 was written on the same subject by James M. Wayne, Esq., couns.-at-law, Savannah, So. Carolina, equally strong, & valuing them at $—— per acre. The letter was written to R. Leake, Esq. See the copy.

69 Of the 10 tracts in Fayette county — are of great value, say $2 to $10 per acre. L. F. was on these lands. The 10 acres joining ditto are of the same quality & value. The 18 tracts in Somerset is where I laid out the intended town of Alleghany, & the 15 tracts purchased from —— Nicklen, Esq., run so entangled, intermixed with them, that I was induced to purchase them. The 7 tracts in Big Bald Eagle Valley are certainly as good lands as those in Sinking Valley, & will, not at a far day, bring from $3 to $15 per acre. I speak as I really believe; the town or village, 200 acres & lots—No. 1—must command a high price, provided a clever man—2 or 3—shall be put on the paid lands to begin the intended improvement.

The 2 tracts on Trough creek Benj. R. Morgan, Esq., I am convinced, would settle, for, agreeably to his words, which with his permission I wrote down and handed him to read. He read and said they were correct & — would do as therein stated.

70 [As to] 1 tract in Mifflin county, it is only necessary to have an interview with Kit Coxe, who- I permitted to continue on the tract in 1812 & to sell him the tract, say $—— per acre, he to pay $—— per annum until the prin. and int. should be paid off.

The 16 tracts in Mifflin county Mr. Monaghan should be earnestly called upon to make return of to land office. He answered me himself, in 1811 & 1812, that he would closely and strictly examine all warrants or tracts taken up since the date of my warrants, & if he found any after-date to them he would return them—he would return them to the office as belonging to me.

[As to] the 16 tracts in Wayne county, I have written fully to Sam'l D. Franks, Esq., & I have no doubt he would do the needful.

PHILADELPHIA, *August* 12, 1815.

Then personally appeared John Simpson, of the city of Philadelphia, merchant, and on his solemn oath, according to law,

71 did depose and say that he was well acquainted with Nicholas Le Favre, the testator in the annexed will named, in his lifetime, and is well acquainted with his handwriting, having often seen him write his name; that he has viewed the aforesaid will and the schedule therein referred to, and that the whole thereof is of the proper handwriting of the said testator to the best of his knowledge and belief. And on the same day did personally appear Michael H. Anthony, of the said city, jeweler, and on his solemn oath, according to law, did depose and say that he was well acquainted with Nicholas Le Favre, the testator in the annexed will named, in his lifetime, and is acquainted with his handwriting, having seen him write; that he has viewed the aforesaid will and the schedule therein referred to, & the whole thereof is of the proper handwriting of the aforesaid testator to the best of his knowledge and belief.

JOHN SIMSON.
MICHAEL H. ANTHONY.

Sworn the day and year above said before—
SAM'L BRYAN, *Register.*

72 CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *March* 21, 1854.

I, William Bowers, Esquire, register for the probate of wills and granting letters of administration in and for the city and [SEAL.] county of Philadelphia, do hereby certify the foregoing writing to be a full, true, and correct copy of the last will and testament of Nicholas Le Favre and the schedules therein referred to, as well as the probate thereof, as the same remains filed and recorded in this office.

Given under my hand and seal of office this twenty-first day of March, anno Domini eighteen hundred and fifty-four.

WM. BOWERS, *Register.*

73 Plaintiffs also offer certified copy of record from the orphans' court of Philadelphia county in the matter of the estate of Nicholas Le Favre, dec'd, containing the petitions of Wm. R. Smith, adm'r, *cum testamento annexo*, of the estate of Nicholas Le Favre, dec'd, for order of sale to pay debts of said decedent, and proceedings thereon, and the deed of Wm. R. Smith, adm'r of Nicholas Le Favre, dec'd, dated 9th of May, 1837, to Joseph Brobst for five tracts of land, including Lewis Walker tract, William Elliot, William Shannon, Nathaniel Brown, and Abraham Scott. This offer — for the purpose of showing a sale and conveyance of the title of Le Favre to Joseph Brobst.

Counsel for the defendants objects to the said record and deed because the debts of the decedent as set forth in the petition of
74 the administrator to pay, which the order of sale issued, were barred by the statute of limitations, their lien extinguished, and would not give jurisdiction to the orphans' court to grant such order.

Exceptions overruled, evidence admitted, and this bill sealed at the request of counsel for defendants.

M. W. ACHESON.

In the Orphans' Court for the County of Philadelphia, held [SEAL.] on the sixteenth day of January, A. D. 1818.

In the Matter of the Estate of NICHOLAS LE FAVRE, Deceased.

The following settlement of the estate of said Nicholas Le Favre, deceased, — and was presented to the court for confirmation and allowance according to law, to wit:

75 The administration account of William R. Smith, administrator, *cum testatmento annexo*, of the estate of Nicholas Le Favre, deceased.

The administrator states the personal property of the deceased to be as follows, viz:

1817.

No. 1. Sundry pictures, consisting of oil and other paintings, now in the possession of Mr. John Simpson, he stating that he has a claim thereon, as p. list and appraisement filed 610

No. 2. Sundry books, maps, and prints, now in the possession of Mr. John Simpson, he stating that he has a claim thereon, as p. list and appraisement filed. 129 25

No. 3. Balance of cash in the hands of Joseph Nourse, Esq., after paying all funeral and other expenses, as p. statement filed ---------- 36 59

The administrator stated that the following debts due by the deceased have been exhibited:

1817.

No. 1. Debt due George Heyl, as p. acc't filed ---------- 25 50

No. 2. Debt due Charles Minor, " ---------- 6 56

76 No. 3. Debt due Charles S. Coxe, as p. acc't filed--- 32

No. 4. " " John Read, Esq., as p. " " ---- 475

No. 5. Debt due William Rawle, Esq., as p. " " ---- 230

No. 6. " " William R. Smith, as p. " " ---- 2,161 76

No. 7. " " John Wells, of Somerset----------

No. 8. " " Philip H. Nicklin----------

No. 9. " " Moses Levy, Esq., for legal services rendered estate since administration ----------

The administrator paid the register for examining and passing this account, and for copies, seal, and certificates, and for issuing of the intended confirmation of this account by orphans' court ---------- 6 50

William R. Smith, above named, on his solemn oath, according to law, deposes and says that the above statement is just and true to the best of his knowledge and belief.

WM. R. SMITH.

Sworn and subscribed the 2d day of December, 1817, before—
SAMUEL BRYAN, *Register*.

77 CITY AND COUNTY OF PHILADELPHIA, *ss:*

I certify that the above writing is a true copy of the original on file in the register's office at Philadelphia.

Given under my hand and seal of office this 14th day of January, anno Domini 1818.

[SEAL.] SAM'L BRYAN, *Register*.

Whereupon it appearing to the court, by the certificates of the register under his seal of office, that due proof by deposition had been taken by him of the legal requisite notice of the presenting of said settlement to the court for confirmation and allowance aforesaid, and no person appearing to contest the same, it is ordered that the said settlement be confirmed absolutely, unless exceptions be filed thereto on or before the next stated orphans' court.

78 At an Orphans' Court in the County of Philadelphia, held at Philadelphia on the fifteenth day of November, A. D. eighteen hundred and thirty-six.

In the Matter of the Estate of NICHOLAS LE FAVRE, Deceased.

William R. Smith, of Bedford county, administrator, with the will

annexed, of said decedent, presented a petition setting forth that the said Nicholas Le Favre died in the year 1815, having first made his last will and testament, bearing date February 21, 1815, and in the said last will made a schedule of lands in sundry counties in Pennsylvania as his property, and also acknowledged a large debt due by him to the said Wm. R. Smith, and directed him, the said William, to sell such part of his real estate as would be sufficient to pay
79 his debts, with the remainder for the benefit of his, the said Le Favre's, heirs, and also directed that the said W. R. Smith should have a reasonable percentage on all sales made and money remitted to the said heirs.

That no executor as such was named in the said will; that letters of administration, with the will annexed, were granted to the said W. R. Smith on the estate of the said Le Favre by the register for the city and county of Philadelphia on the 14th August, 1815.

That the administration account of the said Wm. R. Smith, administrator as aforesaid, was finally confirmed and ratified by the orphans' court of the said city and county on the 16th Jan'y, 1818, whereby it appeared that the sum of $2,930.82 were exhibited as real debts due by the estate, and sundry other debts were also due, amount then not ascertained, and also that no personal property whatsoever had come or could come to the hands of the said
80 adm'r, except the sum of $36.59, balance remaining in the hands of Joseph Nourse, of the city of Washington, after the payment of the funeral and other expenses, as by voucher filed, which said sum was allowed to the said Joseph Nourse for his trouble and expenses in attending to the affairs of the deceased.

That after the death of the said testator the said administrator, as aforesaid discovered that the lands of the said deceased were unseated and principally mountain lands, the greater part of which had been sold for county taxes and the titles much involved.

That the said administrator sent a copy of the will to Ireland to the two daughters of the deceased, who were intermarried, respectively, with Valentine Dillon and William C. Donoughue, and that the said sons-in-law came to Pennsylvania in 1816 or 1817, and — the true situation of the landed estate of the deceased and the
81 magnitude of his debts. They both returned to Ireland without taking any steps to relieve the estate or to settle the same, and the said administrator has not since heard from them. Neither has he had, since the death of the deceased up to the time of presenting this petition, funds in his hands to pay the debts of the deceased or the interest on the same, but the said debts have been accumulating and the lands of the estate more involved in debt for county taxes and the titles to the same rendered more intricate by reason of the several treasurer's sales of the same.

That within one year past the said administrator has been informed by his agents and others that the unseated lands of the estate which lie in the counties of Northumberland, Columbia, & Lycoming may yet be made available for raising a fund to pay the debts, or a part of the same, of the said Nicholas Le Favre
82 by means of compromising with and selling to the different

persons who are now claiming the same by virtue of the treasurer's and other conflicting titles, and that such compromises and sales, if effected, will be an actual benefit to the estate, as the said lands have been long since regarded as a total loss to the said estate; that the debts of the said estate, as actually exhibited and proved in the final settlement of the said administration account, — at this time to the sum of $6,200 and more.

That other debts exist against the estate believed to — about $2,000 at this time, but which have never been liquidated, as the estate was supposed to be insolvent.

And, therefore, praying the court to make a decree authorizing the said W. R. Smith, adm'r, with the will annexed, of Nicholas Le Favre, deceased, to raise the sum of ten thousand dollars out of the real estate of the said Nicholas Le Favre, situate in the
83 counties of Northumberland, Columbia, and Lycoming aforesaid, or so much money as the court may think necessary for the payment of the debts of said deceased, according to the provisions of the 32d section of the act of assembly of the 29th March, 1832, entitled an act relating to orphans' court:

Whereupon the court, upon due proof (a schedule of all the lands wherever situated being also presented with the above petition), granted the prayer of the petitioner, and awarded a decree to raise the sum of $10,000 out of the real estate aforesaid.

O. C., *July* 20, 1838.

In the Matter of the Estate of NICHOLAS LE FAVRE, Deceased.

The proceedings had in the county of Northumberland, under a decree of this court of 15th of November, 1836, to raise the
84 sum of ten thousand dollars for the payment of the debts of the decedent, were presented to the court and ordered to be filed, to wit:

NORTHUMBERLAND COUNTY, *ss*:

At an orphans' court, holden at Sunbury, for the county of Northumberland, the first Monday, to wit, the second day of January, anno Domini 1837, before the Honorable Ellis Lewis, Esq., president, and his associates, Jacob Gearhart and George Weiser, justices of the same court.

The petition of Gen'l W. R. Smith, of Bedford county, Pennsylvania, administrator, *cum. testa. anno*, of Nicholas Le Favre, of the city of Philadelphia, deceased, was preferred to the court, humbly showing that the orphans' court of the county of Philadelphia, on the 15th day of November, 1836, authorized your petitioner to raise the sum of ten thousand dollars for the payment of testator's-
85 debts by the sale of the real estate of said testator situate in the counties of Lycoming, Northumberland, and Columbia, as by the decree of the orphans' court aforesaid, now exhibited, appears.

That the said testator died seized of the following real estate in the county of Northumberland, to wit: One tract surveyed under a

warrant in the name of "Abraham Scott," in Shamokin and Little Mahonoy townships, containing 342 acres, more or less, adjoining lands in the name of John Cook, Samuel Scott, Daniel Campbell, and others; part of a tract surveyed under a warrant to "Joseph Tyson," containing in all 453 acres, more or less, of which about 227 acres, more or less, are in Shamokin township, said county; the said tract is intersected east and west by a branch of Roaring creek and adjoins lands in the names of William Elliot, Thomas Rees, and others; a tract surveyed under a warrant to William
86 Elliott, containing 368 acres, more or less, adjoining the above, and lands in the name of Mary Myers, Lewis Walker, and others, on or near said Roaring creek, formerly in Catawissa, now in Shamokin township; a tract surveyed to "Lewis Walker." containing 371 acres, more or less, adjoining, and lands in the name of John Reynolds, N. Brown, and others, on or near a branch of Roaring creek, formerly in Catawissa township, now in Shamokin township; a tract surveyed to William Shannon, containing 415 acres, more or less, adjoining the last and other lands, formerly in Catawissa township, now in Shamokin township, in said county; so much of a tract formerly in Catawissa township surveyed to "Nathaniel Brown," containing in all 400 acres, more or less, as lies in Shamokin township, in said county, supposed to be about 250 acres, more or less, adjoining the last-described tract, and lands in the names of Lewis Walker, Robert Irwin, and others.

87 The peti-oner, therefore, prays your honors to permit him to make sale of the lands above described for the purpose of raising the aforesaid sum of ten thousand dollars for the payment of the debts of the said testator.

Whereupon, January 14th, 1837, petition read, and the court decree the whole of the lands to be sold.

By the court.

NORTHUMBERLAND COUNTY, *ss:*

At an orphans' court, holden at Sunbury, for the county of Northumberland, the first Monday, to wit, the third day of April, eighteen hundred and thirty-seven, before the Honorable Ellis Lewis, Esq., president, and his associates, Jacob Gearhart and George Weiser, Esq., justices of the same court.

The report of William R. Smith, of Bedford county, adm'r,
88 *cum testamento annexo*, of Nicholas Le Favre, of the city of Philadelphia, deceased, was preferred to the court, — respectfully represents that in pursuance of an order of the orphans' court of the county aforesaid, made on the 14th day of January, 1837, he did expose the lands in said order mentioned to sale by public vendue or outcry (having given due, public, legal, and timely notice of the time and place of sale) on Saturday, 25th day of March, 1837, and sold the same as follows, viz:

The tract in the name of Abraham Scott, containing 342 acres, more or less, to Joseph Probst, Catawissa, for	$25 50
The part of a tract in the name of Joseph Tyson, viz: 227 a's, more or less, in Shamokin township, to William Clyde, of Northumberland, for two hundred and seventy dollars	270 00
89 The tract in the name of William Elliot, containing 360 a's, more or less, to the said Joseph Probst, for the sum of four hundred and sixty dollars	460 00
The tract in the name of Lewis Walker, containing 371 a's, more or less, to the said Joseph Probst, for the sum of five hundred and fifty-five dollars	555 00
The tract in the name of William Shannon, containing 415 a's, more or less, to the said Joseph Probst, for the sum of six hundred and twenty-five dollars	625 00
So much of the tract in the name of Nath'l Brown as *lays* in Northum'd county, in Shamokin township, supposed to be 250 acres, to the said Joseph Probst, for the sum of two hundred and seventy-five dollars	275 00
	$2,210 50

90 Amounting in the whole to the sum of two thousand two hundred and ten dollars fifty cents, on the following conditions: ¼ of the purchase-money to be paid down, the balance on the confirmation of the sale and execution and delivery of the deed; the purchaser to run all risks as to title and quantity—they being the highest and best bidders, and those the highest and best prices bidden for the same—which sale so made the said administrator prays may be confirmed.

Whereupon, April 10th, 1837, report read and confirmed *nisi*.

And now, to wit, April —, 1837, confirmed absolutely.

By the court.

NORTHUMBERLAND COUNTY, *ss:*

I, Jacob Bright, clerk of the orphans' court of the county aforesaid, do certify the proceedings to be truly transcribed from the
91 records of the said court.

In testimony whereof I have hereunto affixed the seal of said court and subscribed my name this 1st day of May, A. D. 1838.

[SEAL.] JACOB BRIGHT, *Clerk.*

COLUMBIA COUNTY, *ss:*

Amongst the records and proceedings of the orphans' court of said county it is thus contained:

The petition of Gen'l W. R. Smith, of Bedford county, Penna., adm'r of Nicholas Le Favre, late of the city of Philadelphia, dec'd, was preferred to the court of —, humbly showing that the orphans' court of the county of Philadelphia, on the 15th day of November, A. D. 1836, on the petition of the said adm'r, did decree a sale of the real estate of the said testator, situate in the county of

92 Northumberland, Columbia, and Lycoming, to raise the sum of ten thousand dollars for the payment of the debts of said testator, as by the decree of said court now exhibited appears; that the said testator died seized in his demesne as a fee of and in a tract of land surveyed to Nathaniel Brown, containing in all four hundred acres, more or less, adjoining tracts in the — of Lewis Walker, Robert Irwin, and others, one hundred and fifty acres, more or less, of which tract of land surveyed to Nathaniel Brown is situate in Roaring [Creek] township, Columbia county.

The petitioner therefore prays your honors to grant him an order to make sale of so much of the tract of land surveyed to Nathaniel Brown as is situated in Roaring Creek township, Columbia county, for and towards raising the sum of ten thousand dollars for the payment of the testator's debts as decreed by the orphans' court of the county of Philadelphia.

93 Whereupon, January the 17th, 1837, said petition was read and the prayer thereof granted.

By the court.

Report.

The report of Gen. Wm. R. Smith, administrator, &c., of Nicholas Le Favre, late of the city of Philadelphia, dec'd, was preferred to the court—

Setting forth that in pursuance of an order of the said orphans' court made the 17th day of January, A. D. last he did expose to sale by public vendue or outcry at the court-house in Danville on the 27th day of March last, having given due, legal, and timely notice of the time and place of sale by hand-bills and publication in a newspaper printed in the said county, and sold the same therein contained, viz: So much of a tract of land surveyed in the

94 name of Nathaniel Brown as is situated in Roaring Creek township, Columbia county, being one hundred and fifty acres, more or less, and adjoining the other part of said tract, and sold the same to Joseph Probst, of Catawissa, for the sum of two hundred and ten dollars, one fourth of the purchase-money to be paid down and the balance on the confirmation of sale and execution and delivery of the deed, he being the highest and best bidder for the same, which sale, so as aforesaid made, the said administrator prays may be confirmed by the court.

Whereupon, April 17th, 1837, said report is read and confirmed *nisi*.

By the court.

COLUMBIA COUNTY, *ss:*

I, James Donaldson, clerk of the orphans' court of said county, do certify that the foregoing is a true copy of the proceedings as appears of record in the foregoing case.

95 In testimony whereof I have hereunto affixed my seal of office and subscribed my name this 3d day of May, A. D. 1838.

[SEAL.] JAMES DONALDSON,
Clerk, O. C.

To the honorable the judges of the orphans' court of Philadelphia county:

William R. Smith, of Bedford county, Pennsylvania, administrator, with the will annexed, of Nicholas Le Favre, formerly of the city of Philadelphia, dec'd, most respectfully reports:

That on the 15th day of November, 1836, at an orphans' court held for the county of Philadelphia, your reporter presented his petition, setting forth, among other things, that the said Nicholas died in the year 1815, having first made his last will and
96 testament, dated February 21st, 1815, and in said will made a schedule of lands in sundry counties of Pennsylvania, and acknowledged a large debt due from him to your petitioner.

That your reporter's administration account was finally confirmed and ratified by the orphans' court of the county of Philadelphia, on the 16th day of January, 1818.

That the debts of the estate of the said Nicholas Le Favre as actually entitled and proved in the final settlement of the said administration account amounted, on the said 15th day of November, 1836, to the sum of six thousand two hundred dollars and more, and praying said court to make a decree authorizing the said petitioner to raise the sum of ten thousand dollars out of the real estate of said testator, situate in the counties of Northumberland, Columbia, and Lycoming, or so much money as the said court
97 might think necessary for the payment of the debts of said intestate, which prayer of your petitioner on the said 15th day of November, 1836, was accordingly granted.

Whereupon your reporter, at an orphans' court held at Sunbury, for the county of Northumberland, on the 14th day of January, 1837, presented his petition praying the said court to grant him an order to sell the following real estate in the county of Northumberland for the purpose of raising the aforesaid sum of ten thousand dollars, to wit, one tract of land, surveyed under a warrant in the name of "Abraham Scott," in Shamokin and Little Mahanoy township, containing 342 acres, more or less, adjoining lands in the name of John Cook, Samuel Scott, Daniel Campbell, and others; part of a tract of land, surveyed under a warrant to "Joseph Tyson," containing in all 453 acres, more or less; about 227 acres, more
98 or less, are in Shamokin township, Northumberland county; the said tract is intersected east and west by branch of Roaring creek, and adjoins land in the names of Wm. Elliot, Thomas Rees, and others.

Also a tract of land, surveyed on a warrant to "William Elliot," containing 368 acres, more or less, adjoining the above and lands in the names of Mary Myers, Lewis Walker, and others on or near said Roaring creek, formerly in Catawissa, now in Shamokin, township.

Also a tract, surveyed to "Lewis Walker," containing 371 acres, more or less, adjoining the last tract and lands in the names of John Reynolds, N. Brown, and others on or near a branch of Roaring creek, formerly in Catawissa township, now in Shamokin township.

Also a tract of land, surveyed to "William Shannon," containing 415 acres, more or less, adjoining the last and other lands, formerly in Catawissa township, now in Shamokin township.

99 Also so much of a tract formerly in Catawissa township surveyed to "Nathaniel Brown," containing in all 400 acres, more or less, as lies in Shamokin township, Northumberland county, supposed to be about 250 acres, more or less, adjoining the last-described tract and land in the names of Lewis Walker, Robert Irwin, and others.

Which said petition, on the 14th day of January, 1837, was granted by the said court. In pursuance of which said order and decree the said petitioner did, on the 25th day of March, 1837, at the court-house, in the borough of Sunbury, in the county of Northumberland, expose the said lands to sale by public vendue or outcry, having given due, legal, and timely notice of the time and place of sale agreeably to the order of court, and sold the tract in the name of "Abraham Scott," containing 342 acres, more or less, to Joseph Brobst, of Catawissa township, Northumberland county, for the sum of

100 twenty-five dollars and fifty cents.

The tract in the name of "Wm. Elliot," containing 368 acres, more or less, to the said Joseph Brobst, for the sum of four hundred and sixty dollars.

The tract in the name of "Lewis Walker," containing 371 acres, more or less, to the said Joseph Brobst, for the sum of five hundred and fifty-five dollars.

The tract in the name of "William Shannon," containing 415 acres, more or less, to the said Joseph Brobst, for the sum of six hundred and twenty-five dollars.

So much of the tract surveyed on a warrant in the name of "Nathaniel Brown," containing in all 400 acres, more or less, as lies in Shamokin township, Northumberland county, supposed to be 250 acres, more or less, to the said Joseph Brobst, for the sum of two hundred and seventy-five dollars.

And so much of the tract surveyed on a warrant in the

101 name of "Joseph Tyson" as is situated in Shamokin township, Northumberland county, being 227 acres, more or less, to William Clyde, of Northumberland, for the sum of two hundred and seventy dollars, they being the highest and best bidders, and those the highest and best prices bidden for the same, which said sales, on report thereof made to the judges of the orphans' court of Northumberland county aforesaid at April term, 1837, were confirmed by the said court, as by the proceedings of said court hereto annexed appear.

And your said reporter further reports that in pursuance of said order and decree of the orphans' court of the county of Philadelphia he did, on the 17th day of January, 1837, present his petition to the judges of the orphans' court of Columbia county to grant him an order to make sale of the following real estate in the county of Columbia to raise the sum of $10,000 for the payment of the

102 debts of said testator, to wit: 150 acres of a tract of land, more or less, surveyed on a warrant in the name of "Nathaniel

Brown," adjoining tracts in the names of Lewis Walker, Robert Irwin, and others, in Roaring Creek township, Columbia county. The whole tract contains 400 acres, more or less.

Which petition, on the 17th day of January last aforesaid was granted.

In pursuance of which order your reporter did, on the 27th day of March, 1837, at the court-house in Danville, expose that part of said tract of land situate in Columbia county in the name of "Nathaniel Brown" to sale by public vendue or outcry (having given due, legal, and timely notice of the time and place of sale), and sold the same to Joseph Brobst, of Catawissa township, Columbia county,

for the sum of two hundred and ten dollars, he being the
103 highest and best bidder and that the highest and best price bidden for the same, which sale so made, on report made to the judges of the orphans' court of Columbia county aforesaid at April term, 1837, was confirmed, as by the proceedings hereto annexed appears.

That from great lapse of time and other causes much difficulty has been experienced in realizing any amount for the payment of the debts of the said deceased, which were chiefly due to your reporter, and he therefore agreed to allow and has allowed for assistance and agency and as a means of compromise one equal third part of the proceeds of said sales, which being deducted from the gross amount of sales leaves for distribution in the hands of your reporter, and the total amount he has received, in discharge of debts due by the estate of N. Le Favre, the sum of sixteen hundred and thirteen dollars and sixty-seven cents.

104 That the just debt of your reporter, principally due for cash lent and advanced to the deceased in his lifetime, acknowledged in his will and bearing interest to the first of April, 1837, amounts to the sum of four thousand seven hundred and twelve dollars and sixty-three cents.

That the only other creditors of the deceased who are now supposed by your reporter to have any claims against the estate of said deceased are those stated in the administration account of your reporter, and whether those accounts as so stated are all justly due *and* uncertain.

The reporter therefore prays that his proceedings as aforesaid may be confirmed.

And your reporter will ever, &c.

WM. R. SMITH,
Adm'r Cum Test. Anno. of N. Le Favre, Dec'd.

105 O. C., *September 7th*, 1839.

The following petition was presented:

To the honorable the judges of the orphans' court of the county of Philadelphia:

The petition of Alexander Jordan, surety of William R. Smith, administrator, with the will annexed, of Nicholas Le Favre, deceased, respectfully showeth—

That under the decree of this honorable court and of the orphans' court of the counties of Northumberland and Columbia sales were made by the said administrator of certain unimproved lands, late of the said decedent, situated in those counties (as appears by the records of this court), to which a return of said sales was made by the said administrator.

That the said administrator is, and for a long time has been, absent from this Commonwealth, and there is reason to be-
106 lieve that he will remain absent for a long time to come.

That part of the money arising from the sales of said lands remains due and unpaid by the purchaser thereof, as your petitioner is informed and believes.

That by an administration account filed by the said administrator in the office of the register for the probate of wills, &c., for the county of Philadelphia, on the 2d of December, 1817, it appears that there are several creditors of the said decedent who, as your petitioner is informed and believes, have never yet been paid any portion of their respective claims, except the administrator himself, who has retained for his own debt.

Your petitioner, therefore, for his greater safety as surety of the said administrator, prays that a citation may issue from this honorable court to William R. Smith, the said administrator, and
107 Joseph Brobst, the purchaser of the said lands, to show cause why the balance of the said purchase-money remaining unpaid should not be paid into court for distribution according to law.

WILLIAM RAWLE,
For Alex'r Jordan.

Citation awarded directed to William R. Smith, administrator, and Joseph Brobst, purchaser of certain real estate, to show cause why the purchase-money should not be paid into court, returnable the third Friday in December next.

COUNTY OF PHILADELPHIA, *ss:*

I certify the foregoing to be a true copy of the record and proceedings in the estate of Nicholas Le Favre, deceased, as full
108 and entire as the same remains filed of record in the office of the clerk of the orphans' court.

Witness my hand and the seal of court this 28th day of August, A. D. 1882.

[SEAL.] W. MARSHAL TAYLOR,
Register of Wills, &c.

Deed of W. R. Smith, administrator of Nicholas Le Favre, deceased, dated 9th of May, 1837, to Joseph Brobst for 5 tracts of land, namely, Abraham Scott, William Elliot, Lewis Walker, William Shannon, and Nathaniel Brown.

Plaintiffs' Offer.

Deed—Joseph Brobst and Anna, his wife, to Hugh Bellas—dated

June 9th, 1837, for five tracts, including Lewis Walker,
109 Abraham Scott, Wm. Elliott, Wm. Shannon, and Nathaniel Brown tracts, consideration $2.500. Acknowledged June 9th, 1837, recorded in Northumberland county, book "C C," page 69, &c.

Deed—Hugh Bellas and wife to Cornelius Garretson—dated Jan'y 1st, 1846, for four tracts, including Lewis Walker, Wm. Elliot, Wm. Shannon, & Nath'l Brown tracts, recorded 15th of January, 1848, in Northumberland county and 7th of February in Columbia county.

Deed—Hugh Bellas and wife to Cornelius Garretson—dated 15th September, 1856, for a strip along the Lewis Walker and Nathaniel Brown tracts, containing sixty-two acres.

Deed—13th of February, 1849, Cornelius Garretson to Alexander Garretson—for one undivided one-half interest in said four tracts of land.

Will of Alexander Garretson, dated 16th of June, 1849, probated the 28th of June, 1849, by depositions, and same filed July
110 6th, 1849, and letters testamentary to executors, Jacob and Edmund Garretson. The will gives power to sell real estate, and authorizes the said executors to convey, &c.

Will of Cornelius Garretson, dated Dec. 17th, 1858, probated Dec. 20th, 1862, and letters testamentary thereon issued to Jacob Garretson and T. O. Van Allen. Contains power to executors to sell and make deeds.

Deed, dated April 16, 1864—Jacob Garretson, surviving executor of A. Garretson, to Rollin N. Rathbun—for one-half of four tracts, including Lewis Walker, Wm. Elliot, Wm. Shannon, and Nathaniel Brown; recorded in Northumberland county April 21st, 1864, in book "W W," page 99, &c.

Deed, April 16, 1864—Jacob Garretson and T. O. Van Allen, executors of Cornelius Garretson, dec'd, to Rollin N. Rathbun—for one-half interest in four tracts of land, including Lewis Walker, Wm. Elliot, Wm. Shannon, and Nathaniel Brown; acknowl-
111 edged April 18, 1864; recorded April 21, 1864, in deed book "W W," page 96, &c., in Northumberland county.

Tripartite deed, Aug. 1, 1864—Rollin N. Rathbun, trustee, &c., of the first part, and Geo. A. Fellows, Philip Dater, R. H. Rathbun, E. P. Wilber, Robert Lockart, of the second part, & Columbia Coal Company, of the third part—for the eastern portion of the aforesaid four tracts, containing 1,053 acres and 27 perches. This includes the William Shannon and the eastern half of the Lewis Walker tract, being eastern half of four tracts above-mentioned, containing 1,053 acres and 27 perches: Beginning at a corner of Ebenezer Brantram; thence by land of John Young and Mary Ruston north 88½ degrees west 416 perches to a corner of Thomas Ruston; thence south 2 degrees west 60 perches to a corner; thence north 88½ west 192 perches to a stone heap—a corner of another tract surveyed in name of Mary Ruston; thence by Mary Ruston south 2 degrees west
112 33 perches to a stone heap; thence by same and Thomas Billington north 88½ degrees west 238.16 per. to a point; thence south 8¼ degrees east 232.35 perches to a pine—a corner of William Gilbert; thence by William Gilbert north 81½ degrees east

395 perches to a corner of Robert Gordon; thence by north 8¼ deg. west 51.3 perches and north 82 deg. 36′ east and 461.1 perches to place of beginning, containing 1,053 acres and 27 perches of land.

Ack'd by R. N. Rathbun Oct. 6, 1864; by Wilber and others Nov. 10, 1864, and by Fellows and others Aug. 24, 1864. Affidavit by R. N. Rathbun that he held in trust.

Recorded in Northumberland county 24th Feb'y, 1875, deed book No. 79, page 315, &c.

In Columbia county the 7th of October, 1865, book "S," page 265, &c.

Certificate of incorporation — Columbia Coal Company of
113 29th April, 1864, signed by George A. Fellows, Philip Dater, R. Rathbun, E. P. Wilber, Robert Lockart.

Affidavit signed by R. H. Rathbun, E. P. Wilder, and Robert Lockart. Approved April 29, 1864, by the attorney general. Recorded in Northumberland county, in deed book, May 5th, 1864.

Certificate recorded in Columbia county May 6th, 1864, in mortgage book No. 5, page —, and in the secretary of the Commonwealth's office May 7th, 1864.

Letters patent to Columbia Coal Company May 7th, 1864.

Exemplification of Record of Judgment.

GEORGE A. FELLOWS
vs.
THE COLUMBIA COAL COMPANY. } No. 211.

August Term, 1871. From Northumberland County.

Aug. 14, 1871. Judgment for $18,306.81 for want of an appearance, containing the *fi. fa.* on above judgment, levy on the lands of the Columbia Company, inquisition, — condemnation, and the
114 lands could not be divided and sold in each county, and sold in Northumberland county, by the sheriff of said county, to George A. Fellows & Philip Dater for $20,000.

Deed—John B. Heller, sh'ff of Northumberland county, to George A. Fellows and Philip Dater—dated 15 of March, 1872, for the above lands. Entered in sheriff's deed book "D," page 229.

Exemplification of entry of the acknowledgment of the above deed in sheriff's deed book, North'd Co.

Exemplification of will of George A. Fellows, dated 7th of May, 1867, and codicil, Oct. 19, 1870. Probate and letters testamentary issued 29th July, 1880, to Elizabeth L. Fellows. Executrix gives real estate to executrix in trust, &c.

Plaintiffs also offer declaration in trust by Rollin N. Rath-
115 bun, dated 9th of April, 1864. Acknowledged 29th of April, 1864, as to above lands—the four tracts Wm. Elliot, Lewis Walker, Wm. Shannon, and Nathaniel Brown held for Fellows & others in trust; the east part, including Wm. Shannon, Nathaniel Brown, and eastern part of Lewis Walker, 1,053 acres and 27 perches, for George A. Fellows, Philip Dater, E. P. Wilber, R. H. Rathbun,

and Jno. Lockart, who composed the Columbia Coal Co.; the west part, 997 acres 33 perches, for E. A. Packer, J. E. Rathbun, —— Newton, —— Benedict, who composed the Northumberland Coal Company.

Plaintiffs further offer book of returns of unseated lands by deputy surveyors of Northumberland county for the purpose of showing acts of ownership for many years by Dr. Ruston and those claiming under him, in connection with the evidence already in, to be
116 followed by evidence that prior to 1864 these surveys were wild and uncultivated and these were the only acts possible except possession and cultivation.

Also to show that no one else claimed these warrants in any way, and read from return of William Gray of Jan'y 26, 1796:

No.	Names of Warrantees.	Present Owners.	Acres.	Situation.
753	William Elliot		368	Adjoining Joseph Tyson on waters of Fishing creek.
754	Lewis Walker		371¼	Adjoining William Elliot on waters of Fishing creek.
755	William Shannon		415	Adjoining Lewis Walker on waters of Fishing creek.
756	Nathaniel Brown		400	Adjoining Lewis Walker on waters of Fishing creek.

At the bottom of the return is added:

These foregoing valued by—

WILLIAM FINLAND.
MICHAEL BOYER.
ROBERT FIELD.

Also offers unseated land-book, Northumberland county, Catawissa township, assessments 1796 to 1805, inclusive:

117

No.	Warrantees' Names.	Present owners.	Acres.	Adjoins.	Aggregate amount of tax.
756	Brown, Nathaniel		400	Adjoins Lewis Walker	5.96 "P'd S."
755	Shannon, William		415	" " "	6.46 "P'd S."
754	Walker, Lewis		371¼	" William Elliot	5.71 "P'd S."
753	Elliot, William		368	" Joseph Tyson	5.61 "P'd S."

Also unseated land-book, Northumberland county, marked (12), assessments from 1805 to 1813:

No.	Warrantees.	Late owners.	Acres.	Adjoiners.	Yrs.	Total Co. tax.	1805. P'd S.
758	Elliot, William	N. Le Favre	368	Joseph Tyson	9	P'd S. 5.12	.49 pd. *
756	Brown, Nathaniel	"	400	Lewis Walker	9	P'd S. 5.41	.55 pd S.*
754	Walker, Lewis	"	371¼	Wm. Elliot	9	P'd S. 5.21	.50 pd S.*
755	Shannon, Wm.	"	415	Lewis Walker	9	P'd S. 5.73	.73 pd S.*

*Taxes carried out to 1812. P'd.

Offer assessment transcript unseated land-book "A," Shamokin township:

Nathaniel Brown	— acres	Adjoining	Joseph Tyson	Assessed, 1836 to 1839
Elliot, William	368 "	"	Joseph Tyson	" from 1836 " 1839
Shannon, William	415 "	"	Lewis Walker	" " 1836 " 1839
Walker, Lewis	371 "	"	Wm. Elliot	" " 1836 " 1839

118 Also offer unseated land-book from 1840 [to] 1844, Coal township:

Warrantees.	Owners.	Acres.	Adjoiners.	Ass'd from—
Elliot, William		368	Ad'ng Jos. Tyson	1840 to 1844
Shannon, William		415	" Lewis Walker	" "
Walker, Lewis		371	" Wm. Elliot	" "

Also offer assessment [from] 1846 to 1851, inclusive:

Warrantees.	Owners.	Acres.	Adjoiners.	
Elliot, William	C. Garretson	368	Joseph Tyson	Taxes paid.
Shannon, William	"	415	Lewis Walker	Taxes paid.
Walker, Lewis	"	311	Wm. Elliot	Taxes paid.
		60	In Columbia Co.	

Also offer unseated land-book assessment [from] 1852 to 1857, inclusive:

Warrantees.	Owners.	Acres.	Assessed from—	
William Elliot	C. Garretson	368	1852 to 1857	Taxes paid.
William Shannon	"	415	" " "	" "
Lewis Walker	"	311	" " "	" "

119 Also assessment for 1858 and 1859:

Warrantees.	Owners.	Acres.	
William Elliot	C. Garretson	361	County, State, road, & school taxes p'd Ap'l 10, 1860, before sale.
"	"	52	County, State, road, & school taxes p'd Ap'l 10, 1860, before sale.
William Shannon	"	333½	County, State, road, & school taxes p'd Ap'l 10, 1860, before sale.
Lewis Walker	"	318	County, State, road, & school taxes p'd Ap'l 10, 1860, before sale.

Also assessment for 1860 and 1861:

William Elliot	C. Garretson	361 a's.	Road, school, county, & State taxes paid.
William Shannon.	"	333½ "	" " " " " "
Lewis Walker	"	318 "	" " " " " "

Also assessment for 1862 and 1863:

William Elliot	C. Garretson	361 acres.	Taxes paid.
William Shannon	"	333½ "	" "
Lewis Walker	"	318 "	" "

Also assessment for 1864 and 1865:

William Elliot	C. Garretson	361 acres.	Taxes paid.
William Shannon	"	333½ "	" "
Lewis Walker	"	318 "	" "

120 Also offer treasurer's sale-book — 1816.

Plaintiffs offer assessment-books of seated land and propose to read assessments to the Northumberland Coal Company.

Counsel for defendants objects.

JOHN E. RATHBUN called and sworn.

Counsel for defendants require a written offer of what plaintiffs propose to prove.

Written Offer No. 1.

The plaintiffs propose to prove by the witness, John E. Rathbun, that he was interested in the purchase of the lands conveyed by the Garretsons to R. N. Rathbun; that after or about the time the Columbia Coal Company was organized possession was taken by the owners of the several tracts of land, valuable improvements erected thereon, and a party or tenant placed in the occupancy of the dwelling erected on the lands; that from the year 1864 to 1880 large sums

of taxes were paid by the claimants of said land. This is
121 offered in furtherance of the previous offer of the payment of taxes and as evidence of claim of title.

Counsel for defendants object—

1st. Because the offer does not propose to prove that possession was taken and improvements made on the lands described in this writ.

2d. Because the offer does not propose to prove payment of taxes since 1864 to 1880 on the land described in this writ.

3d. Because the evidence already offered by the plaintiffs shows that the land described in this writ was conveyed by R. N. Rathburn to the Columbia Coal Company by deed dated 28th August, 1864, and was sold by the sheriff of Northumberland county, Mar. 15, 1872, as the property of the said company, to Geo. A. Fellows and Philip Dater, the plaintiffs.

4th. Because, for the purposes of plaintiffs' offer, payment of taxes cannot be shown without first proving such taxes to have been
122 properly assessed against the proper owners of the lands taxed.

By the court.

Objections overruled. Evidence admitted and this bill sealed at request of counsel for the defendants.

M. W. ACHESON.

JOHN E. RATHBURN testifies:

Rollin N. Rathburn was my brother; lived in Philadelphia; now deceased; consideration paid for four tracts of land was $128,000 for each half, or $250,000; after purchase made by R. N. Rathburn, in trust, in order to develop the land, two companies were formed; after companies were formed the stock was divided up; J. M. Benedict had one-sixth, H. Cushing one-sixth, Philip Dater one-sixth, E. A. Packer one-eighth, G. A. Fellows one-eighth, and myself one-fourth.

Some others allowed their names to be used in both com-
123 panies. I was vice-president and looked after the lands. The Columbia Coal Co. was organized in 1864. The lands were surveyed and examined by ——— Shaeffer, having also in view a practicable line for railroad. We had Roberts there, and Ammerman afterwards—Henry Pleasants also. We commenced immediately after purchase to operate on these lands. We put up a house and saw-mill; put men to work shafting for coal to prove the veins, which we continued for a year; no other improvements at that time. We partially built two other houses. At the time we commenced there were no other improvements on the land. No one lived on the lands at the time we occupied them, nor any railroad nearer than three and one-half miles by nearest practicable route. In round numbers we expended in developing the lands between forty and fifty thousand dollars; erected dwelling-house for the men in 1864; continued operations for one and a half years, when we suspended work,
124 having no railroad near. We left Isaac Lewis in charge, who opened a drift in the vein. He was to take charge of the

property. He took out and sold coal to farmers. Lewis was followed by Jonathan Hoover, who put his son-in-law there, named Zimmerman. He corresponded with us, paid taxes, &c.; lived at Mt. Carmel. He so did till death, about 1872; was followed by William Griffith, who occupied the house and took out coal. He remained two or three years, and was followed by William Hand; lived in Red House; performed same duties. These persons staid until 1873, when Ed. Davis came. Hoover was directed by me to have some one occupy the Red House and look after th peroperty. Davis was living there when these defendants came and took possession. (Witness here explained that he thought Griffith followed Hand.) None of the owners lived near the land until I
125 went to Treverton in 1870, which is 12 or 13 miles away.

I have paid taxes myself for the company; was vice-president and general manager for both companies. I paid taxes for the following years: On William Elliot, $158.63; William Shannon, $144.35; Lewis Walker, $144.79 in January, 1868; this was redemption money—number of acres not given in my receipts. Same date I redeemed Nathaniel Brown by sending messenger with money, $119.00. I remember of paying other taxes. Several times money was forwarded to Hoover to pay them. Our payment- of taxes have been continuous from 1864 to 1880.

Defendants took possession of the land in 1875. I was then living in New York; on hearing of their action I came on and went there and saw them in possession; Davis was there. I know that Davis was there. Defendants were in the "Red House." I saw Cummings there; not the first time I went. They were without my
126 permission or knowledge. I think I did not at first demand possession. Following that I went to Pottsville, and then had them arrested and taken off the property and took possession myself. Afterwards they took possession again.

Cross-examined:

The "Red House" is on the William Elliot—on the turnpike from Reading to Sunbury. That is the only tract on which any improvements were made; no developments on the Lewis Walker. The unfinished houses were on the Elliot, also the saw-mill—all the improvements were there. The saw-mill is all rotted down; did not go on the property when I saw Cummings at Shamokin; did not go there to see who were in possession; went there with the deputy sheriff. The arrest was for cutting down trees, &c. I don't recollect that judgment was rendered against me. It may
127 have been. It was never tried. I don't remember who were arrested. The parties I arrested were taken to Mt. Carmel. They returned the same day. They went into the log barn. I then pulled down the barn while they were in it. I had a good force of men there. They arrested me for forcible entry. John H. Gable led my men when they tore down the barn. I saw Davis while he was on the tract; that is my impression. I had no consultation with him while on the tract. I and Fellows constituted Hoover our agent. He wanted to lease the property from us. Griffith was

holding at the latter part in opposition to us. I never tried to put him out. I have always understood that Griffith bought Hand's interest out.

I went to Sunbury and arranged with Greenough to ascertain who was entitled to the royalty on the coal taken out by
128 Hand. We took down the houses and stopped working.

Redirect:

The "Red House" cost $1,500 or $2,000; it was a permanent building. Judge Dietrick led the opposition forces from Williamsport, 30 or 40 in number.

Pl'ffs read as follows:

Seated assessments previously offered and admitted.

Assessment for 1865.

The Northumberland Coal Company, seven houses; State tax, $36.68.

William Elliot, 368; Lewis Walker, 318; William Shannon, 333; valuation, $12.228.

Assessment for 1866.

The Northumberland Coal Company, 1,019 acres; valuation, $12,228; State tax, $12.64.

1867.—Northumberland Coal Company, 1,019 acres; valuation, $12,228; $1.24, county tax.

1858.—Northumberland Coal Company, 1,019 acres, occupied by self; valuation, $18,342; county tax, $146.73.

129 1869.—Northumberland Coal Company, 1,019 acres, occupied by self; valuation, $18,342; county tax, $146.73.

		Acres.	By whom occupied.	Valuation.	County tax.
1870	North'd Coal Co..	1,019	----------	18,342	$146 73
1871	" ..	1,019	----------	"	128 39
1872	" ..	1,019	----------	"	128 39
1873	" ..	1,019	----------	"	128 29
1874	" ..	1,019	Ed. Davis ----------	20,380	101 90
1875	" ..	1,019	" ----------	"	101 90
1876	" ..	1,019	Walkins & Tregelles.	"	223 80
1877	" ..	1,019	" ..	"	156 66
1878	" ..	1,019	Isaac Lewis ----------	12,190	85 33 36 76 said tax.
1879	" ..	1,019	" ----------	12,190	85 33 36 37 " "
1880	" ..	1,019	----------	12,190	85 33 60 95 " "
1881	" ..	1,019	----------	12,190	85 33 45 76 " "
1882	" ..	1,019	----------	12,190	85 33 48 76 " "

130 GEORGE A. HERRING sworn:

I live in Bloomsburg, Columbia Co.; I am deputy treasurer. These are the sale books of the treasurer of Columbia county.

JOHN B. CASEY sworn:

I reside in Bloomsburg, Columbia county; I am clerk for county commissioners. These are unseated land books (showing books). Counsel propose to show payment of taxes on Nathaniel Brown and part of Lewis Walker.

1838, '39, '40, '41—*Roaring Creek Township.*

	Warrantees.	Acres.	Valuation.	Co. tax.	Total tax.
	Brown, Nathaniel ..	150	225	56	2.19
1842 & '43..	Brown, Nathaniel ..	400	600	------	8.68. P'd by J. Pheasants.
1844 & '45..	Brown, Nathaniel ..	400	200	------	14.81. P'd by J. Pheasants.
1846-47.....	Brown, Nathaniel ..	400	200	------	15.90. P'd June 9, 1848, by R. F. Clark, for H. Bellas.
1848-9.. ...	Brown, Nathaniel ..	400	200	------	16.30. P'd June 8, 1850, by C. Garretson.
1854-55 ...	Brown, Nathaniel ..	400	800	------	33.13. P'd May 31, 1856, by R. F. Clark, for C. Garretson.

131 *Conyngham Township.*

		Acres.	Tax.	
1856-57.....	Brown, Nathaniel ..	400	46.40	P'd April 26, 1857, by C. Garretson.
1860-61.....	Brown, Nathaniel ..	400	40.80	P'd March 3, 1862, by R. F. Clark.
1862-63.....	Brown, Nathaniel ..	400	37.60	P'd April 14, 1864, by T. O. Van Allen.
1864-65	Brown, Nathaniel ..	400	90.88	P'd June 11, 1866; sold to A. W. Rea; redeemed by Jno. E. Rathbun for Col. Coal Co.

Treasurer's Book.

		Acres.	Tax.	
1864–65	Walker, Lewis	8		P'd June 8, 1868, by A. W. Rea. P'd June 11, 1868. Jno. E. Rathbun.
1866–67	Brown, Nathaniel	450	160.65	P'd June 8, 1868, by A. W. Rea. P'd June 11, A. W. Rea, by Rathbun.
" "	Walker, Lewis	8	2.86	P'd June 8, 1868, by Jas. E. Rathbun for Col. Coal Co.
1868–69	" "	8		Valuation, $30.00. Sold June 30, 1870; red. June 12, 1872, by Geo. A. Fellows.
" "	Brown, Nathaniel	450		329.67. Sold June 30, 1870; redeemed June 12, 1872, by Geo. A. Fellows.
1870–71	Brown, Nathaniel	450		351.70. P'd June 3, 1872, by Fellows and Dater.
" "	Walker, Lewis	8	3.31	P'd June 11, 1872, by Fellows & Dater.
1872–73	" "	8	4.10	P'd April —, by Packer, for Fellows.
1872–73	Brown, Nathaniel		453.90	P'd April 15, 1874, per W. C. Packer, for Fellows.
132 1874–75	Brown, Nathaniel			Sold June 12, 1876, to Geo. A. Fellows; redeemed June 5, 1878, by R. M. Cummings.
1874–75	Walker, Lewis			Sold June 12, 1876, to Geo. A. Fellows; redeemed June 5, 1878, by R. M. Cummings.
1876–77	Brown, Nathaniel	450	498.15	June 10, p'd by Geo. A. Fellows.
" "	Walker, Lewis	8	9.74	June 10, p'd by Geo. A. Fellows.
1878–79	Brown, Nathaniel	450	87.50	Sold June 21, 1880, to D. W. Kingsbury; redeemed June 12, 1882, by Jno. E. Rathbun.
" "	Walker, Lewis	8	21.50	

Evidence for Defendants.

Counsel for the defendants offer the application for the Lewis Walker and a large number of other tracts, dated the 26th day of November, 1793. Endorsed on the back: Reese, Evans, and others; entered by William Lane for Daniel Reese; certified the 5th day of May, 1877.

133 The head of the application reads thus:

Daniel Reese applies for four hundred acres of land, adjoining lands surveyed for Cadwalader Evans on the northwest corner of the same, to include a large branch of — in Lower Bald Eagle township, Northumberland county.

Among others William Elliot applies for four hundred acres of land on a branch of Roaring creek, etc.

Ebenezer Branham applies for four hundred acres of land on a

branch of Roaring creek, adjoining Dr. Thomas Ruston's lands, etc.

Lewis Walker applies for four hundred acres of land one mile north of a road leading from Reading to Sunbury, etc.

William Shannon applies for four hundred acres of land one mile north of a road leading from Reading to Sunbury, adjoining other lands of Dr. Thomas Ruston, etc.

134 Joseph Tyson applies for four hundred acres of land one mile north of a road leading from Reading to Sunbury, adjoining other lands of Dr. Thomas Ruston, etc.

Defendants' counsel offer in evidence warrant dated the 26th November, 1793. Lewis Walker, four hundred acres, lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other lands.

Also warrant dated 26th of November, 1793, to William Shannon, four hundred acres, lying one mile north of a road leading from Reading to Sunbury, adjoining other land of Dr. Thomas Ruston.

Also offer warrant dated 26th November, 1793. William Elliot, four hundred acres, adjoining lands this day granted to Cadwalader Evans.

Also offer in evidence warrant dated 26th November, 1793.

135 Nathaniel Brown, four hundred acres, on a branch of Roaring creek, adjoining Dr. Thomas Ruston's lands.

Also offer in evidence warrant dated 26th November, 1793. Ebenezer Branham, four hundred acres, on a branch of Roaring creek, adjoining lands of Dr. Thomas Ruston.

Defendants' counsel offer in evidence survey dated the 22d of October, 1794, on a warrant dated 26th November, 1793, to Lewis Walker containing 371¼ acres and allowance.

Also survey dated the 22d of October, 1794, to William Shannon on warrant dated the 26th of November, 1793, 415 acres and allowance.

Also survey dated the 22d of October, 1794. William Elliot on warrant dated 26th November, 1793; three hundred and sixty-eight acres and allowance.

Also survey dated the 21st of October, 1794. Nathaniel

136 Brown on warrant dated 26th of November, 1793; four hundred acres and allowance.

Also survey dated the 21st of October, 1794, Ebenezer Branham on warrant dated 26th of November, 1793; four hundred and forty-one and one-fourth acres and allowance.

The defendants' counsel offer in evidence a certified connected draft from the land office of the six tracts of lands named in the warrants just given in evidence, dated the 9th of October, 1874.

The defendants' counsel offer book already in evidence, marked on the outside: 1796. Returns of deputy surveyors by William Gray for Augusta, Catawissa, Shamokin, and Mahanoy.

We find in this book the certificate of William Gray, deputy surveyor, which reads thus:

GENTLEMEN: I have made this return as exact as was in

137 my power from the papers in my hands, and am, gentlemen, with respect, your very humble servant,

WILLIAM GRAY, *D. S.*

To Christian Derring, Henry Vandershie, and Nathan Stockman, com'rs of North'l'd Co.

Dated January 26, 1796.

The numbers are:

Number.	Name of warrantee.	Acres.	Situation and remarks.
752	Joseph Tyson	453	Waters of Roaring creek.
753	William Elliot	368	Adjoining Joseph Tyson.
754	Lewis Walker	371¼	" William Elliot.
755	William Shannon	415	" Lewis Walker.
756	Nathaniel Brown	400	" Lewis Walker.
757	Ebenezer Branham	441¼	" Nathaniel Brown.

Defendants' counsel file writ and offer, viz:

Plaintiffs having introduced in evidence the return of William Gray (dated January 26, 1796), deputy surveyor of the Commonwealth of Pennsylvania for Catawissa and other townships in Northumberland county, of the Lewis Walker and other surveys:

138 The defendants now offer to read from the same return of William Gray, deputy surveyor, other surveys in the same township returned as belonging to Dr. Ruston, to be followed by the assessment books of Northumberland county, showing payment of taxes on the lands returned as the property of Dr. Thomas Ruston to a different person, or by a different *purpose* than the one who paid or received the taxes on the Lewis Walker tract.

Also that another tract in the same county was surveyed in the name of Lewis Walker, and said tract was returned in the aforesaid return of William Gray as the property of Dr. Thomas Ruston, and that the taxes on this tract *was* paid to or by the same person who paid or received the taxes on the other lands of Dr. Thomas Ruston, who was a different person who paid or received the taxes on No. 754, Lewis Walker survey.

139 This offer is for the purpose of explaining that part of the return of William Gray, deputy surveyor, and those parts of the assessments received in evidence by the plaintiffs, and to show by the same ancient record offered by the plaintiffs and in part received by them that Dr. Thomas Ruston made no claim nor exercised any act of ownership to or over survey No. 754, Lewis Walker.

Plaintiffs' counsel object to the offer—

1st. For the reason that the offer is irrelevant and is incompetent for the purpose stated therein.

2d. The offer, for the purpose stated therein, is immaterial.

3d. The duty of the deputy surveyor was simply to return the lands for taxation, and the duty of the county commissioners was simply to value the lands and levy the taxes assessed by them; that neither had any power or authority to affect the ownership

140 of the lands returned and assessed.

4th. The return of other lands than the tracts in question, and the taxation of them, to Dr. Ruston, [and] the payment of taxes by Ruston or others to the same or another officer of Northumberland county, are wholly irrelevant to the issue in this case, and do not prove or tend to prove claim or non-claim by Dr. Ruston of the Lewis Walker tract in suit.

Objections sustained. Evidence rejected and bill sealed for defendants.

M. W. ACHESON.

Defendants' counsel offer No. 1 received in connection with the further offer to show that the taxes paid by the marshal's sale of Dr. Ruston's lands in Northumberland county were paid to John Boyd, as shown by said return.

To be followed by the assessment-books of Northumberland
141 county for the same years in which a tract of Lewis Walker, assessed as belonging to T. Ruston, was charged with taxes, and the same marked paid to B, and that in the same assessment-books for the same years tract No. 754, Lewis Walker, was assessed with taxes and the name of no one given, and taxes marked paid to S.

This to be followed by evidence showing that, according to the mode of doing business in the collection of taxes in Northumberland county, the treasurer in receipting such taxes marked on the assessment his initials.

This offer [was] made to show that Thos. Ruston made no claim to the survey Lewis Walker No. 754, but did make claim to the survey Lewis Walker 306, as returned by the deputy surveyor, and to show in connection with the application at Harrisburg, already offered, that Thomas Ruston did not make the application for Lewis
142 Walker No. 754, or make any claim to it subsequently, and that if he paid any purchase-money at Harrisburg it was upon the Lewis Walker No. 306.

Plaintiffs' counsel object.

As to the return of the marshal and all that it contains it is already in evidence; we make no objections. The unseated land-book of Northumberland county, as far as it relates to the Lewis Walker survey, which is numbered in the margin by the No. 754, is already in evidence, and any marks that appear upon that book opposite to the charge of taxes are already in evidence. The fact that Dr. Ruston was charged with taxes upon another tract of land in the name of Lewis Walker as warrantee, and that the taxes thereon were paid and marked as paid to B, is wholly immaterial to this case. It does not prove, or tend to prove, any fact material to the issue
143 we are trying.

What was the land that was sold and upon which the marshal paid the taxes can only be ascertained by a reference to the marshal's deed and the writs in evidence. That is better evidence of what was transferred by that sale than any reference to the commissioner's or treasurer's books.

Any competent testimony that the defendants may have to prove that Dr. Ruston did not apply for the Lewis Walker — in controversy in this suit, or that he did not pay the purchase-money for it, we make no objection to. We believe if they can prove that fact it would be competent; but we deny that the fact can be proved by a reference to the assessment-books or the treasurer's books of Northumberland county.

144 To so much of this offer as is embraced in offer No. 1 we make the same objections to as we made to No. 1. As a further objection to this evidence the record, the judgment of the circuit court of the United States of Pennsylvania, shows that the marshal sold five tracts, of which — Lewis Walker in controversy was one, and that he paid taxes upon those tracts which he sold because the taxes were by law made a lien upon those lands.

By the court: The court rejects the offer and seals a bill for the defendants.

M. W. ACHESON.

Defendants' counsel offer certificate of an entry in the old purchase blotter, certified the 9th of February, 1856, for the purpose of showing that the extract of the entry in the old purchase blotter offered in evidence by the plaintiffs was an erroneous certificate of the entry.

145 Defendants' counsel offer in evidence certified copy of patent, dated April 12th, 1797, for the Lewis Walker tract, for three hundred and seventy-one and one-fourth acres, and allowance of six per cent. for roads, &c.

The patent is to Peter Grahl for a certain tract of land called Brookland, in Catawissa township, Northumberland county, which said tract was surveyed in pursuance of a warrant dated 26th November, 1793, granted to the said Lewis Walker, who by deed dated the 27th of November, 1793, conveyed the same to the said Peter Grahl with the appurtenances.

Plaintiffs' counsel object because it is not competent for the defendant to read the patent, with the recitals therein contained, as against the plaintiffs, who claim under Dr. Ruston. The re-

146 citals in the patent are not evidence as against those claiming under Dr. Ruston.

Second. The defendants have not shown that Peter Grahl was entitled to take out the patent, or that he paid any consideration whatever. As the case now stands the patent inures to the benefit of the plaintiffs, and because the evidence is irrelevant and immaterial to the defendants' case.

Third. The marshal's sale of 1803 conveyed the whole interest to Le Favre, and entitled him to obtain the patent. The marshal's sale relates back to the date of the judgment in 1796, which is prior to the date of this patent, and cuts off conveyances subsequent to the date of the commencement of the lien of the judgment.

Objections sustained. Evidence rejected and bill sealed for the defendants.

M. W. ACHESON.

147 The defendants' counsel renew the last offer, and in connection therewith offer to show conveyances from the patentee to the defendants in this suit, as follows:

Letter of attorney from John Grahl to Peter Grahl, dated the 4th day of June, 1879, acknowledged on the 21st day of February, 1800, recorded in Northumberland county in deed book "L," page- 147 and 148, on the 26th day of February, 1800, authorizing the attorney-in-fact to contract, grant, bargain, sell, [and] convey unto purchaser or purchasers all or any part of his lands situate in Northumberland county, including the warrant of Lewis Walker.

Also deed of John Grahl, by his attorney-in-fact, Peter Grahl, to Charles Tower, dated 11th of February, 1800, acknowledged the 13th of February, 1800, recorded in Northumberland county in deed book "L," pages 148, etc., on the 26th of February, 1800, for
148 six tracts of land situate in Northumberland county, containing the Lewis Walker tract, patented to Peter Grahl *inter alia*.

Also will of Charles Tower, dated the 29th of December, 1829; probated the 10th of March, 1830; recorded the 10th of March, 1830, and letters testamentary issued to Jeremiah Tower and John Anderson as executors, devising all his property, real and personal, to Jeremiah Tower (his nephew).

Also offer to prove that Jeremiah Tower died in January, 1851, intestate, leaving a widow, Julia Ann Tower, and children, as follows: Jane, intermarried with C. D. Herron; Elizabeth B., intermarried with John A. Jackson, and Charles J. Tower.

Also offer deed, dated the 14th of April, 1875, from Julia Ann Tower, widow of Jeremiah Tower, deceased; Elizabeth B. Jackson and John A. Jackson, her husband; Jane Herron and Charles D. Herron, her husband, and Charles J. Tower, all of the city of
149 Pittsburg, heirs and legal representatives of Jeremiah Tower, deceased, to R. M. Cummings, for the undivided two-thirds part of a tract of land surveyed on a warrant issued to Lewis Walker, dated November 26th, 1793, and patented to Peter Grahl, together with other parcels of land, acknowledged the 14th of April, 1875, in the State of Pennsylvania, county of Allegheny; recorded in Northumberland county, in deed book, volume 70, page 336, &c., on the 20th of August, 1875.

This evidence to be followed by proof that these defendants took actual possession of said lands in March, 1875, described in the foregoing conveyances; paid taxes, by redeeming the said lands from tax sales; made improvements, expended large sums of money in opening coal mines, and have since, and do now, hold actual possession of said lands.

Also to be followed by evidence that Nicholas Le Favre had
150 personal notice of the title under the patent issued to Peter Grahl, and its conveyance to Tower in October, 1814, by a letter from Hugh Bellas to N. Le Favre, bearing date October 7, 1814.

Also to be followed by proof that at the sheriff's sale, when the

plaintiffs in this case purchased in 1872, notice was given to bidders of the title of these defendants.

Plaintiffs' counsel object—

Because the testimony offered is irrelevant and incompetent.

Objection sustained. Evidence rejected and bill sealed for the defendants.

151 *Application of Daniel Rees and Others, Offered in Evidence by Defendants.*

1. Daniel Rees applys for four hundred acres of land, adjoining lands surveyed to Cadwallader Evans on the northwest corner of the same, to include a large branch of Tannosquatic, in Lower Bald Eagle township, Northumberland county.

2. Sarah Rees applys for 400 acres of land, adjoining land this day granted to Daniel Rees by warrant, in Lower Bald Eagle township, Northumberland county.

3. Hannah Rees applys for 400 *hundred* acres of land, adjoining lands this day granted to Sarah Rees by warrant, in Lower Bald Eagle township, Northumberland county.

4. Thomas Rees, junior, applys for 400 *hundred* acres of land, adjoining lands this day granted to Hannah Rees by warrant,

152 in Lower Bald Eagle township, Northumberland county.

5. Thomas Rees, senior, applys for 400 acres of land — this [day] granted to Thomas Rees, junior, by warrant, in Lower Bald Eagle township, Northumberland county.

6. Jesse Evans applys for 400 acres of land, adjoining land this day granted to Thomas Rees, senior, by warrant, in Lower Bald Eagle township, Northumberland county.

7. Susanna Rees applys for 400 acres of land, adjoining land this day granted to Jesse Evans by warrant, in Lower Bald Eagle township, Northumberland county.

8. John W. Godfrey applys for 400 acres of land, adjoining land this day granted to Susanna Rees by warrant, in Lower Bald Eagle township, Northumberland county.

153 9. Robert Erwine applys for 400 acres of land, adjoining land this day granted to John W. Godfrey by warrant, in Lower Bald Eagle township, Northumberland county.

10. David Evans applys for 400 acres of land, adjoining lands this day granted to Robert Erwine by warrant, in Lower Bald Eagle township, Northumberland county.

11. Charles Evans applys for 400 acres of land, adjoining land this day granted to David Evans by warrant, in Lower Bald Eagle township, Northumberland county.

12. William Lane applys for 400 acres of land, adjoining lands this day granted to Charles Evans by warrant, in Lower Bald Eagle township, Northumberland county.

13. Sarah Lane applys for 400 acres of land, adjoining land this day granted to William Lane by warrant, in Lower Bald Eagle township, in Northumberland county.

154 14. Mary Lane applys for 400 acres of land, adjoining lands this day granted to Sarah Lane by warrant, in Lower Bald Eagle township, Northumberland county.

15. Isaiah Davis applys for 400 acres of land, adjoining land this day granted to Mary Lane by warrant, in Lower Bald Eagle township, Northumberland county.

16. Peter Dehaven, Sr., applys for 400 acres of land, adjoining land this day granted to Isaiah Davis by warrant, in Lower Bald Eagle township, Northumberland county.

17. James Hepburn, Peter Dehaven, Jr., applys for 400 acres of land, adjoining land this day [granted] to Peter Dehaven, Sr., by warrant, in Lower Bald Eagle township, Northumberland county.

18. Cadwallader Evans applys for 400 acres of land, adjoining land this day granted to Peter Dehaven, Jr., by warrant, in
155 Lower Bald Eagle township, Northumberland county.

19. William Elliot applys for 400 acres of land, adjoining land this day granted to Cadwallader Evans by warrant, in Lower Bald Eagle township, Northumberland county.

20. Ruth Elliot applys for 400 acres of land, adjoining land this day granted to William Elliot by warrant, in Lower Bald Eagle township, Northumberland county.

21. Joseph Roberts applys for 400 acres of land, adjoining land this day granted to Ruth Elliot by warrant, in Lower Bald Eagle township, Northumberland county.

22. Joseph Taylor applys for 400 acres of land, adjoining land this day granted to Joseph Roberts by warrant, in Lower Bald Eagle township, Northumberland county.

156 23. Caleb Lowns applys for 400 acres of land, adjoining land this day granted to Joseph Taylor by warrant, in Lower Bald Eagle township, Northumberland county.

24. Linsay Coats applys for 400 acres of land, adjoining land this day granted to Caleb Lowns by warrant, in Lower Bald Eagle township, Northumberland county.

25. Isaac Longstreth applys for 400 acres of land, adjoining land this day granted to Linsay Coats by warrant, in Lower Bald Eagle township, Northumberland county.

26. Richard Tunis applys for 400 acres of land, adjoining land this day granted to Isaac Longstreth by warrant, in Lower Bald Eagle township, Northumberland county.

27. John McColly applys for 400 acres of land, adjoining land this day granted to Richard Tunis by warrant, in Lower Bald Eagle township, Northumberland county.

157 28. Robert Annessley applys for 400 acres of land, adjoining land this day granted to John McColly by warrant, in Lower Bald Eagle township, Northumberland county.

29. William Yardley applys for 400 acres of land, adjoining land this day granted to Robert Annessley by warrant, in Lower Bald Eagle township, Northumberland county.

30. Jonathan Willis applys for 400 acres of land, adjoining land this day granted to Wm. Yardley by warrant, in Lower Bald Eagle township, Northumberland county.

31. William Gray applys for 400 acres of land, adjoining land this day granted to Jonathan Willis by warrant, in Lower Bald Eagle township, Northumberland county.

32. Robert Gray applys for 400 acres of land, adjoining land this day granted to William Gray by warrant, in Lower Bald
158 Eagle township, Northumberland county.

33. Thomas Umphreys applys for 400 acres of land, adjoining land this day granted to Robert Gray by warrant, in Lower Bald Eagle township, Northumberland county.

34. Charles Allen applys for 400 acres of land, adjoining land this day granted to Thomas Umphreys by warrant, in Lower Bald Eagle township, Northumberland county.

35. Christian Hohn applys for 400 acres of land, adjoining land this day granted to Charles Allen by warrant, in Lower Bald Eagle township, Northumberland county.

36. William Hohn applys for 400 acres of land, adjoining land this day granted to Christian Hohn by warrant, in Lower Bald Eagle township, Northumberland county.

37. Elizabeth Hohn applys for 400 hundred acres of land,
159 adjoining land this day granted to William Hohn by warrant, in Lower Bald Eagle township, Northumberland county.

38. Peter Hohn applys for 400 acres of land, adjoining land this day granted to Elizabeth Hohn by warrant, in Lower Bald Eagle township, Northumberland county.

39. Susanna Hohn applys for 400 acres of land, adjoining land this day granted to Peter Hohn by warrant, in Lower Bald Eagle township, Northumberland county.

40. William Gilbert applies for 400 acres of land, adjoining land this day granted to Susannah Hohn by warrant, in Lower Bald Eagle township, Northumberland county.

41. Samuel Baird applies for 400 acres of land, adjoining land this day granted to William Gilbert by warrant, in Lower Bald Eagle township, Northumberland county.

160 42. Joseph Kelso applies for 400 acres of land, adjoining land this day granted to Samuel Baird by warrant, Lower Bald Eagle township, in Northumberland county.

43. James White applys for 400 acres of land, adjoining land this day granted to Joseph Kelso by warrant, in Lower Bald Eagle township, Northumberland county.

44. Rebeccah Kelso applys for 400 acres of land, adjoining land this day granted to James White by warrant, in Lower Bald Eagle township, Northumberland county.

45. Jesse Brooke applys for 400 acres of land, adjoining land this day granted to Rebeccah Kelso by warrant, in Lower Bald Eagle township, Northumberland county.

46. Charles Brew applys for 400 acres of land, adjoining land this day granted to Jesse Brooks by warrant, in Lower Bald Eagle township, Northumberland county.

161 47. Martha Godfrey applys for 400 acres of land, adjoining land this day granted to Charles Brew by warrant, in Lower Bald Eagle township, Northumberland county.

48. Joseph Tyson applys for 400 acres of land, adjoining land this day granted to Martha Godfrey by warrant, in Lower Bald Eagle township, Northumberland county.

49. James Bear applys for 400 acres of land, adjoining land this day granted to Joseph Tyson by warrant, in Lower Bald Eagle township, Northumberland county.

50. John Warner applys for 400 acres of land, adjoining land this day granted to James Bear by warrant, in Lower Bald Eagle township, Northumberland county.

51. William Elliot applys for 400 acres of land on a branch of Roaring creek, adjoining Doct. Thomas Ruston's lands, in
162 Catawissa township, Northumberland county.

52. Ebenezer Branham applys for 400 acres of land on a branch of Roaring creek, adjoining Dr. Thomas Ruston's land, in Catawissa township, Northumberland county.

53. Nathaniel Brown applys for 400 acres of land on a branch of Roaring creek, adjoining Dr. Thomas Ruston's land, in Catawissa township, Northumberland county.

54. David Kanady applys for 400 acres of land, adjoining Robert Morris, & Lightfoot, & Star & Comp., T., including the heads of two springs running into Shamokin creek, in Catawissa township, Northumberland county.

55. Robert Erwine applies for three hundred acres of land adjoining Robert Morris, & Lightfoot, & Star & Company, including the heads of two springs running into Shamokin creek, in Catawissa township, North'd county.

163 56. Joseph Tyson applies for four hundred acres of land lying one mile north of a road leading from Reading to Sunbury, adjoin'g Dr. Thomas Ruston's other lands in Catawissa township, Northumberland county.

57. Lewis Walker applies for four hundred acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining Doctor Thomas Ruston's other lands in Catawissa township, Northumberland county.

58. William Shannon applies for four hundred acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining other lands of Doct. Thos. Ruston, in Catawissa township, Northumberland county.

Francis West applys for 400 acres of land adjoining land
164 of Walter Stewart and Thomas Millard, in Catawissa township, Northumberland county.

John M. Nesbitt applys for 400 acres of land, -joining lands of Evan Owens and Walter Stewart, in Catawissa township, Northumberland county.

Blair McClenachen applys for 400 acres of land, adjoining lands formerly surveyed on Beaver creek upon the south, and lands lately surveyed for Walter Stewart, in Catawissa township, Northumberland county.

Patrick Moore applys for 400 acres of land, adjoining lands this day granted to Rebeccah Rees by warrant, in Catawissa township, Northumberland couuty.

Jonathan Nesbitt applys for 400 acres of land, adjoining land this day granted to Roland Rees by warrant, in Catawissa township, Northumberland county.

The above 5 applications *is* for Walter Stewart.

165 John Rees applys for 400 acres of land, adjoining lands of William Ekhart, Peter Dehaven, Robert Crawford, and others, about three miles west of the south branch of Roaring creek, in Catawissa township, Northumberland county.

James McNeal applys for 400 acres of land, adjoining land this day granted to John Rees by warrant, in Catawissa township, Northumberland county.

We, the subscribers, *tow* of the justices of the peace in and for the said county, do certify from the best information that we can get that the above-described tracts of land are unimproven, as witness our hands.

DAN'L MONTGOMERY.
JNO. WETZEL.

These above to be entered for account of Walter Stewart.

166 Warrants issued for all the foregoing tracts except 5 of Mr. *Mr.* Stewart — 50 p. cent. interest from date hereof.

In testimony that the above and foregoing is a true copy of the original remaining on file in the department of internal affairs of Pennsylvania I have hereunto set my hand and affixed the seal of said department at Harrisburg this 5th day of May, A. D. 1877.

[SEAL.] N. C. WILSON,
For William McCandless, Secretary of Internal Affairs.

Endorsement on back: 26 November, 1793. Rees, Evans, Godfrey, and others. Ent'd by Wm. Lane for Daniel Rees.

167 June Term, 1882.

PHILIP DATER *et al.*
vs.
JANE HERRON *et al.* } No. 33.

Charge of the court.

GENTLEMEN OF THE JURY: This is an action of ejectment, brought on April 24, 1882, by Philip Dater and Elizabeth L. Fellows, against Jane Herron and other defendants named in the writ, for a tract of land situated partly in Northumberland county and partly in Columbia county, in the western district of Pennsylvania, and containing about 230 acres. For the most part the land lies in Northumberland county—a small corner only, consisting of about 7 or 8 acres, lying within Columbia county. The land in controversy is part of a tract of 371¼ acres designated during this trial as

the "Lewis Walker tract," having been surveyed on the 22d
168 of October, 1974, upon a warrant issued to him.

The plaintiffs put in evidence a certified copy of an ancient paper, dated Nov. 26, 1793, on file in the land office, designated as old purchase voucher No. 12969, and in connection therewith a certified copy of an entry under date of June 14th, 1794, from the "old purchase blotter" in the land office. These documents were offered to show, and they are evidence tending to show, that Dr. Thomas Ruston was the owner of the Lewis Walker warrant, and paid to the Commonwealth the purchase-money for said tract of land.

An exemplification of a record of the circuit court of the United States for the then district of Pennsylvania (in evidence) shows that on Oct. 13th, 1796, James Clayland, for use, obtained a judgment in that court against Dr. Thomas Ruston, which was afterwards revived and such proceedings had thereon that, in pursuance of a writ of execution (*Vend exp.*), John Smith, the United States mar-
169 shal, on August 15th, 1803, sold the said tract of land as the property of the defendant, Dr. Thomas Ruston, to Nicholas Le Favre, to whom the marshal, on Oct. 11, 1803, executed a deed dated and acknowledged on the date last mentioned.

The plaintiffs have shown that by sundry mesue conveyances the title which Nicholas Le Favre thus acquired became vested in them prior to the bringing of this action.

In connection with their paper title the plaintiffs gave evidence tending to show that for many years they and those under whom they claim asserted title to the land and paid taxes thereon without any hostile claim being set up against them until the year 1875, when the defendants took possession.

If the evidence on the part of the plaintiffs is believed by
170 the jury it makes out a *prima facie* case for the plaintiffs, and they are entitled to your verdict upon this branch of their title.

In order to simplify the case (and by agreement of the counsel of the respective parties) I instruct you to disregard and throw out of the case altogether the evidence which relates to the distinct title which the plaintiffs set up under the tax sale to Charles Pleasants.

In U. S. Circuit C. June T., 1882.

PHILIP DATER *et al.*
vs.
JANE HERRON *et al.* } No. 33.

Before verdict — rendered counsel for defendants except to the following parts of the charge of the court to the jury:

"The plaintiffs put in evidence a certified copy of an ancient paper dated Nov. 26, 1793, on file in the land office, designated as old purchase voucher No. 12969, and in connection therewith

171 a certified copy of an entry, under date of June 14th, 1794, from the old purchase blotter in the land office. These documents were offered to show, and they are evidence tending to show, that Dr. Thomas Ruston was the owner of the Lewis Walker warrant, and paid to the Commonwealth the purchase-money for said tract of land."

Also the following parts of said charge:

"The plaintiffs have shown that by sundry mesne conveyances the title which Nicholas Le Favre thus acquired became vested in them prior to the bringing of this action. In connection with their paper title the plaintiffs gave evidence tending to show that for many years they, and those under whom they claim, asserted title to the land and paid taxes thereon without any hostile claim being set up against them until the year 1875, when the defendants took
172 possession. If the evidence on the part of the plaintiffs is believed by the jury it makes out a *prima facia* case for the plaintiffs, and they are entitled to your verdict upon this branch of their title."

And thereupon the court sealed this bill of exceptions to the said portions of the charge.

M. W. ACHESON.

To Hon. M. W. Acheson, judge:

It is hereby agreed by the undersigned, counsel for the respective parties in this case, that the foregoing contains a full and accurate statement of the evidence, offers of evidence of the counsel of the respective parties, and the objections thereto, in the trial
173 of the above-stated case.

Sept. 1, 1883.

ROB'T P. ALLEN,
Att'y for Jane Herron et al., Pl'ffs in Error and Def'ts below.
SAM'L LINN,
Att'y for Philip Dater et al., Def'ts in Error & Pl'ffs below.

Endorsed: C. C. U. S., W. D. Pa. No. 33. June term, 1882. Philip Dater *et al. vs.* Jane Herron *et al.* Bills of exception. Filed Sept. 12, 1883.

174 UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } ss:

I, B. S. Bentley, clerk of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, do hereby certify that the above and foregoing pages contain a full, true, and correct copy of the whole record and proceedings in the aforesaid case, so full and entire as the same remain of record and on file in said court.

Witness my hand and the seal of said court at Williamsport this 27th day of September, A. D. 1883.

[Seal of the U. S. Circuit Court, W. D. Penn.]

B. S. BENTLEY, *Clerk.*

Endorsed on cover: W. Pennsylvania C. C. U. S. No. 399. Jane Herron and Charles D. Herron, her husband, in right of said Jane; Elizabeth B. Jackson and John A. Jackson, her husband, in right of said Elizabeth B.; Charles J. Tower and R. M. Cummings, plaintiffs in error, *vs.* Philip Dater and Elizabeth L. Fellows. Filed 11th October, 1883.

120-464

PAPER BOOK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 399.

JANE HERRON AND CHARLES D. HERRON, HER HUSBAND, IN RIGHT OF SAID JANE; ELIZABETH B. JACKSON AND JOHN A. JACKSON, HER HUSBAND, IN RIGHT OF SAID ELIZABETH B.; CHARLES J. TOWER, AND R. M. CUMMINGS,
Plaintiffs in Error,

vs.

PHILIP DATER AND ELIZABETH L. FELLOWS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

R. P. ALLEN,
A. H. DILL,
JOHN G. READING, JR.,
Attorneys for Plaintiffs in Error.

HELLER BROTHERS, LAW PRINTERS, WILLIAMSPORT, PA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 399.

JANE HERRON AND CHARLES D. HERRON, HER HUSBAND, IN RIGHT OF SAID JANE; ELIZABETH B. JACKSON AND JOHN A. JACKSON, HER HUSBAND, IN RIGHT OF SAID ELIZABETH B.; CHARLES J. TOWER, AND R. M. CUMMINGS,
Plaintiffs in Error,

VS.

PHILIP DATER AND ELIZABETH L. FELLOWS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

STATEMENT OF THE CASE.

This is an action of Ejectment brought by Philip Dater and Elizabeth L. Fellows against Jane Herron and Charles Herron, her husband, in right of the said Jane, Elizabeth B. Jackson and John A. Jackson, her husband, in her right, Charles J. Tower and R. M. Cummings, in the Circuit Court of the United States for the Western District of Pennsylvania, to recover possession of a certain part of a tract of land situate in Mt. Carmel Township, Northumberland County, in said district, containing two hundred and thirty acres, or thereabouts, and being part of a tract of land surveyed on the 22d day of October, 1794, in pursuance of a warrant dated

HELLER BROTHERS, LAW PRINTERS, WILLIAMSPORT, PA.

November 26th, 1793, granted by the Commonwealth of Pennsylvania to Lewis Walker. (Printed copy of Record, page 12, original page 38.)

Both parties to the issue claim title from the Commonwealth of Pennsylvania. The plaintiffs below attempted to trace title from the Commonwealth by the following testimony:

First,—a certified extract from an application filed in the land office of the state, which shows *inter alia* that Lewis Walker applied for four hundred acres of land. (Print 12, 13; Original, 39, 40.)

Second,—a certified copy of what is called old purchase voucher No. 12969, bearing date November 29th, 1793, from the same office, and which is simply a statement of the amount of the purchase money to be paid on six certain traets, including the Lewis Walker, £60, with interest to be added from November 26, 1793. (Print 13; Orig'l 41.)

Dr. Thomas Ruston is not connected in the land office with either of the foregoing papers, as appears by the full copy of the application of Daniel Rees, Lewis Walker and others, given in the printed record on page 51 to 55, which shows that Lewis Walker was No. 57 in the list in this application, and the endorsement on the back of this application is: "26 November, 1793. Rees, Evans, Godfrey, and others. Ent'd by Wm. Lane for Daniel Rees."

The third item of evidence offered by the plaintiff below, was a certified copy of an entry in a book in the Land Office, called the old purchase blotter or John Keble's blotter, and is as follows:

"1794, June 14.—Dr. Ruston 6 w'r'ts of 400 a's am't 50 p. c't p'd, specie ch., £60. Fees 6 ß p'd; rem'r charge of 168 D's. Rec't Dd."

This entry in the "blotter" contained the same number (12969) as that of the statement of the purchase money upon the six tracts above mentioned, but it is so uncertain in its terms as to give no definite knowledge of the amount of money paid by Dr. Ruston, or for whom he paid it.

This entry was offered by the plaintiffs below "for the purpose of showing title in Thomas Ruston to the Lewis Walker

tract in dispute;" and was objected to by the counsel for the defendants below as insufficient for that purpose, on the grounds stated upon the record. The objections were overruled and the evidence admitted, (Print, 13; Orig'l, 42) and this ruling of the Court below is assigned as one of the errors.

The plaintiffs below followed the foregoing proofs by showing the warrant issued by the Commonwealth to Lewis Walker for 400 acres of land, dated November 26, 1793, and a survey of the same made for him October 22d, 1794, under the warrant, giving Walker 371¼ acres; and also the warrants and surveys of some other tracts near the same location.

No other evidence was given to show title from the Commonwealth to Thomas Ruston, from whom the plaintiffs below by divers mesne conveyances claim title.

The other testimony on their behalf was the return made by William Gray, deputy surveyor, on February 23d, 1795, to the Commissioners of Northumberland County, of the Lewis Walker and other tracts for purposes of taxation, but no names of owners were given other than the warrantees, (Print 14: Org'l 45); also similar return of the same surveyor, made January 26, 1796, (Print 38; Org'l, 116). The tax books of assessments on unseated lands in this county show the Lewis Walker tract assessed in that name, and none other from 1796 to 1805 inclusive, (Print 38; Org'l 117), and tax paid. In the same assessment books the Lewis Walker tract is assessed from 1805 to 1813 and taxes paid, and N. Le Favre named in the lists as "late owner." From 1813 to 1836 no taxes were assessed, and in the assessments from 1836 to 1846 the name of no owner was given, and it does not appear that any taxes were paid, (Print 39; Org'l, 117, 118).

The land in controversy remained unoccupied and unimproved until possession was taken of it by the defendants below, in 1875.

The plaintiffs below failed to show a single act of ownership by Thomas Ruston or by those who attempt to claim title under him, except an occasional payment of taxes upon the land in the unseated list, and it could not be in that list unless it was unimproved and unoccupied.

The defendants below, having offered in evidence, in the trial, the application of Daniel Rees, Lewis Walker and others, filed in the Land Office November 26, 1793, and endorsed "Ent'd by Wm. Lane for Daniel Rees," also the warrant from the Commonwealth to Lewis Walker for 400 acres, dated November 26, 1793, issued in pursuance of the application, also the survey to Lewis Walker, made October 22, 1794, in pursuance of the warrant of November 26, 1793, then offered a certified copy of the patent from the Commonwealth of Pennsylvania to Peter Grahl, dated April 12, 1797, for the tract of land surveyed to Lewis Walker in pursuance to the warrant to him dated November 26, 1793, and which patent recited the fact that Lewis Walker, by deed dated November 27, 1793, had conveyed the said tract, with the appurtenances, to Peter Grahl.

The counsel for the plaintiffs below objected to the introduction in evidence of this patent on the ground that Dr. Ruston held a prior title to the land from the Commonwealth, and the court below sustained this objection and refused to allow the patent to be read to the jury, and this ruling has been assigned as error. (Print 49; Org'l 145, 146).

The defendants below then renewed the offer of the patent to Peter Grahl for the land in dispute, in connection with an offer of the several conveyances showing a connected chain of title from Peter Grahl to them, to be followed by proof that they took *actual* possession of the land in dispute in 1875, paid taxes by redeeming the land from tax sales, made improvements, expended large sums of money in opening coal mines, and had ever since held *actual* possession of the land; and also, that Nicholas Le Favre (who purchased the alleged title of Dr. Ruston at marshal's sale on October 11, 1803) received notice in October, 1814, of the title in Peter Grahl under the patent to him, and that the plaintiffs below, when they purchased at sheriff's sale in 1872, received notice of the same facts. This offer of evidence was also rejected by the court below, and has been specified here as error. (Print 50, 51; Org'l 147, 148, 149 and 150).

The court below also refused to allow the defendants to read in evidence other parts of the return of Wm. Gray, deputy

surveyor to the Commissioners of Northumberland County, made in 1796, (and in part read by the plaintiffs below) to show that Dr. Thomas Ruston made no claim to the Lewis Walker tract (Print 47; Org'l 138, 139 and 140); or to show for the same purpose that the taxes paid by Dr. Ruston on lands which he did in fact own, in the same county, and paid into the same office during the same time, were paid to or by a different person than the taxes paid on the land in dispute; and to show that there was another tract surveyed by the Commonwealth in the same locality and in the same county, in the warrantee name of Lewis Walker, which was claimed by Dr. Ruston, and not the tract in dispute. These offers of evidence were all rejected by the court, and have been assigned for error. (Print 48, 49; Org'l 141, 142, 143 and 144).

These rulings of the court left the defendants without any evidence except the application of Daniel Rees, Louis Walker and others, and the warrant and survey to Walker for the land in dispute.

The jury were substantially charged to find for the plaintiffs below, the land described in the writ, and they accordingly rendered their verdict.

The court charged that the statement in the Land Office of the purchase money upon the Lewis Walker tract and five others, amounting to £60, and the memorandum in John Keble's blotter, No. 12969, dated June 14, 1794, were "evidence tending to show that Dr. Thomas Ruston was the owner of the Lewis Walker warrant, and paid to the Commonwealth the purchase money for said tract of land." This part of the charge was excepted to before verdict, and is relied upon as a ground of reversal by the plaintiffs in error. (Print 56, 47; Org'l 170 and 161).

The court below also charged the jury that "the plaintiffs have shown that by sundry mesne conveyances the title which Nicholas Le Favre thus acquired became vested in them prior to the bringing of this action." (Print 57; Org'l 172).

The records from the Orphans' Court of the City of Philadelphia (offered in evidence by the plaintiffs below) show that the will of Le Favre was probated August 12, 1815, and let-

ters issued thereon the same day to Wm. R. Smith (Print 17; Org'l 52, 53); that a settlement of the personal estate was filed by the executor in 1817 and confirmed by the court on January 16, 1818, (Print 25, 26; Org'l 75, 76, 77); and that not until 1837 was an attempt made to sell the real estate of Le Favre to pay debts. Such sale was purported to have been made to Joseph Bobst in 1837, but was never confirmed by the Orphans' Court of Philadelphia (the domicil of the testator at the time of his death) as required by the laws of Pennsylvania, and the order to sell was void as the lien of the debts, and the debts were barred under the statutes of the state; and further, the record does not show that the purchase money was ever paid by Bobst, as the citation upon him to pay the money into court, obtained September 7, 1839. was never answered or discharged. (Print 34, 35; Org'l 105, 106 and 107).

For record of the Orphans' Court, see Print 25 to 35 inclusive, and Org'l 72 to 108.

In the trial below the counsel for defendants objected to the introduction of this record by the plaintiffs on the ground that it appeared on the face of the record of the Orphans' Court; that it had no jurisdiction to grant an order of sale, but the court overruled the objection (see Print. 25; Org'l, 73 and 74).

ASSIGNMENT OF ERRORS.

FIRST.—The Court below erred in overruling the objections of the defendants below, and in admitting the evidence of the plaintiffs, which said offer, objections and ruling of the said Court, are as follows:

"Plaintiff's counsel offer:

"Copy of old purchase blotter No. 12969, 1794, June 14,—Dr. Ruston 6 W'r'ts of 400 a's, am't, 2400 d's, 50 p. c't p'd specie ch. £60. Fees 6 s p'd; rem'r charge of 168 D's. Rec't Dd."

"Offered for the purpose of showing title in Thomas Ruston to the Lewis Walker tract in dispute."

"Counsel for defendant object because the warrant issued to Lewis Walker, dated 26th November, 1793, or payment of the purchase money by Dr. Ruston without the consent of the warrantee, would give him no title. Title accrued to Lewis Walker on 26th of November, 1793. A payment of purchase money by Dr. Ruston on June 14, 1794, would give him no title. If any title whatever accrued to Dr. Ruston it would be but a resulting trust; also because the counsel for the plaintiffs do not propose to follow it with any evidence showing a conveyance of the legal title to Dr. Ruston or those claiming under him, or any possession of the land by him or them, or the bringing of any action of ejectment to recover it within twenty-one years from the date of the warrant."

"Objections overruled, evidence admitted and bill sealed at the request of the counsel for defendants.

M. W. ACHESON."

(See Print 13, Original 41 and 42.)

SECOND.—The Court below erred in overruling the objections of the defendants below and in admitting the evidence of the plaintiffs, which said offer, objections and ruling of the Court thereon are as follows:

"Plaintiffs also offer certified copy of record from the Orphans' Court of Philadelphia County, in the matter of the estate of Nicholas LeFavre, dec'd, containing the petitions of Wm. R. Smith, administrator *cum testamento annexo* of the estate of Nicholas LeFavre, dec'd, for order of sale to pay debts of said decedent and proceedings thereon, and the deed of Wm. R. Smith, administrator of Nicholas LeFavre, dec'd, dated 9th May, 1837, to Joseph Bobst for five tracts of land including Lewis Walker tract, William Elliot, William Shannon, Nathaniel Brown and Abraham Scott.

"This offer for the purpose of showing a sale and conveyance of the title of LeFavre to Joseph Bobst.

"Counsel for the defendants object to the said record and deed, because the debts of the decedent as set forth in the petition of the administrator, to pay which the order of sale issued, were barred by the statute of limitations, their lien extinguished, and would not give jurisdiction to the Orphans' Court to grant such order.

"Exceptions overruled, evidence admitted, and this bill sealed at the request of counsel for defendants."

M. W. ACHESON."

THIRD.—The Court below erred in sustaining the objections of the plaintiffs below and in rejecting the evidence offered by the defendants below, which said offer of evidence, objections and ruling of the Court, are as follows:

"Defendant's counsel offer, viz:

"Plaintiffs having introduced in evidence the return of William Gray, (dated January 26, 1796) deputy surveyor of the Commonwealth of Pennsylvania for Catawissa and other townships in Northumberland County, of the Lewis Walker and other surveys;

"The defendants now offer to read from the same return of William Gray, deputy surveyor, other surveys in the same township returned as belonging to Dr. Ruston, to be followed by the assessment books of Northumberland County, showing payment of taxes on lands returned as the property of Dr.

Thomas Ruston, to a different person or by a different person than the one who paid or received the taxes on the Lewis Walker tract. Also that another tract in the same county was surveyed in the name of Lewis Walker, and said tract was returned in the aforesaid return of William Gray as the property of Dr. Thomas Ruston, and that the taxes on this tract were paid to or by the same person who paid or received the taxes on the other lands of Dr. Thomas Ruston, and who was a different person from him who paid or received the taxes on No. 754 Lewis Walker survey.

"This offer is for the purpose of explaining that part of the return of William Gray, deputy surveyor, and those parts of the assessments received in evidence on the part of the plaintiffs, and to show by the same ancient record offered by the plaintiffs and in part read by them, that Dr. Thomas Ruston made no claim nor exercised any act of ownership to or over survey No. 754 Lewis Walker.

"Plaintiffs' counsel object to the offer,—

"1st. For the reason that the offer is irrelevant and is incompetent for the purpose stated therein.

"2d. The offer for the purpose stated therein is immaterial.

"3d. The duty of the deputy surveyor was simply to return the land for taxation, and the duty of the county commissioners was simply to value the lands and levy the taxes assessed by them; that neither had any power or authority to affect the ownership of the lands returned and assessed.

"4th. The return of other lands than the tracts in question, and the taxation of them to Dr. Ruston, and the payment of taxes by Ruston or others to the same or another officer of Northumberland County, are wholly irrelevant to the issue in this case, and do not prove or tend to prove claim or non-claim of the Lewis Walker tract in suit.

"Objections sustained, evidence rejected, and bill sealed for defendants.

M. W. ACHESON."

(See Print 47, 48; Org'l 138, 189, 140).

FOURTH. The Court below erred in sustaining the objection of the plaintiffs below and in rejecting the evidence offered by the defendants below, which said offer of evidence, objections and ruling of the Court are as follows:

"Defendants' counsel offer No. 1, (to be) received in connection with the further offer to show that the taxes paid by the marshal's sale of Dr. Ruston's lands in Northumberland County were paid to John Boyd, as shown by said return. To be followed by the assessment books of Northumberland County for the same years, in which a tract of Lewis Walker assessed as belonging to T. Ruston was charged with taxes, and the same marked paid to B., and that in the same assessment books for the same years tract No. 754 Lewis Walker was assessed with taxes and the name of no one given, (as owner) and taxes marked paid to S. This to be followed by evidence showing that according to the mode of doing business in the collection of taxes in Northumberland County, the Treasurer in receipting such taxes marked on the assessment (book) his initials. This offer is made to show that Thomas Ruston made no claim to the survey Lewis Walker No. 754, but did make claim to the survey Lewis Walker 306, as returned by the deputy surveyor, and to show in connection with the application at Harrisburg already offered that Thomas Ruston did not make the application for Lewis Walker No. 754, or make any claim to it subsequently, and that if he paid any purchase money at Harrisburg it was upon the Lewis Walker No. 306.

"Plaintiffs' counsel object.

"As to the return of the marshal and all that it contains, it is already in evidence; we make no objections. The unseated land book of Northumberland County, as far as it relates to the Lewis Walker survey which is numbered in the margin by the No. 754, is already in evidence, and any marks that appear upon that book opposite to the charge of taxes are already in evidence. The fact that Dr. Ruston was charged with taxes upon another tract of land in the name of Lewis Walker as warrantee, and that the taxes thereon were paid and marked as paid to B., is wholly immaterial to this case. It does not prove or tend to prove any fact material to the issue

we are trying. What was the land that was sold and upon which the marshal paid the taxes can only be ascertained by reference to the marshal's deed and the writs in evidence. That is better evidence of what was transferred by that sale than any reference to the Commissioners' or Treasurer's books. Any competent testimony the defendants may have to prove that Dr. Ruston did not apply for the Lewis Walker in controversy in this suit, or that he did not pay the purchase money for it, we make no objections to; but we deny that the fact can be proved by a reference to the assessment books or the Treasurer's books of Northumberland County. To so much of this offer as is embraced in offer No. 1, we make the same objections as we made to No. 1. As a further objection to this evidence, the record, the judgment of the Circut Court of the United States of Pennsylvania shows that the marshal sold five tracts, of which Lewis Walker in controversy was one, and that he paid taxes on those tracts which he sold, because the taxes were by law made a lien upon those lands.

"By the Court: The Court rejects the offer and seals a bill for the defendants.

M. W. ACHESON."

(See Print 48, 49; Org'l 141, 143, 144).

FIFTH.—The Court below erred in sustaining the objections of the plaintiffs below and in rejecting the evidence offered by the defendants below, which said offer of evidence, objections and ruling of the Court are as follows:

"Defendants' counsel offer in evidence a certified copy of Patent dated April 12th, 1797, for the Lewis Walker tract for three hundred and seventy-one and one-fourth acres and allowance of six per cent. for roads, &c. The Patent is from (Commonwealth of Pennsylvania) to Peter Grahl for a certain tract of land called Brookland in Catawissa Township, Northumerland County, which said tract was surveyed in pursuance of a warrant dated 26 November, 1793, granted to the said Lewis Walker, who by deed dated the 27th of November, 1793, conveyed the same to the said Peter Grahl with the appurtenances.

"Plaintiffs' counsel object because it is not competent for the defendant to read the Patent with the recitals therein contained as against the plaintiffs, who claim under Dr. Ruston. The recitals in the Patent are not evidence as against those claiming under Dr. Ruston.

"Second,—The defendants have not shown that Peter Grahl was entitled to take out the Patent, or that he paid any consideration whatever. As the case now stands the Patent enures to the benefit of the plaintiffs, and because the evidence is irrelevant and immaterial to the defendants' case.

"Third,—The marshal's sale of 1803 conveyed the whole interest to LeFavre, and entitled him to obtain the Patent. The marshal's sale relates back to the date of the judgment in 1796, which is prior to the date of this Patent, and cuts off conveyances subsequent to the date of the commencement of the lien of the judgment.

"Objections sustained, evidence rejected and bill sealed for the defendants.

M. W. ACHESON."

(See Print 49; Original 145 and 146.)

SIXTH.—The Court below erred in sustaining the objections of the plaintiffs below and in rejecting the evidence offered by the defendants below, which said offer of evidence, objections and ruling of the Court are as follows:

"The defendants' counsel renew the last offer," (contained in the fourth assignment of error), "and in connection therewith offer to show conveyances from the patentee to the defendants in this suit, as follows:

"Letter of Attorney from John Grahl to Peter Grahl, dated the 4th day of June, 1779, acknowledged on the 21st day of February, 1800, recorded in Northumberland County in Deed Book "L", pages 147 and 148, on the 26th day of February, 1800, authorizing the attorney-in-fact to contract, grant, bargain, sell and convey unto purchaser or purchasers all or any part of his lands situate in Northumberland County, including the warrant of Lewis Walker.

"Also deed of John Grahl, by his attorney in fact, Peter Grahl, to Charles Tower, dated 11th of February, 1800, acknowledged the 13th of February, 1800, recorded in Northumberland County, in Deed Book 'L,' page 148, etc., on the 26th of February, 1800, for six tracts of land situate in Northumberland County, containing *inter alia* the Lewis Walker tract, patented to Peter Grahl.

"Also, Will of Charles Tower, dated the 29th of December, 1829, probated the 10th of March, 1830, recorded the 10th of March, 1830, and letters testamentary, issued to Jeremiah Tower and John Anderson as executors, devising all his property, real and personal, to Jeremiah Tower, (his nephew).

"Also offer to prove that Jeremiah Tower died in January, 1851, intestate, leaving a widow, Julia Ann Tower, and children as follows: Jane, intermarried with C. D. Herron; Elizabeth B., intermarried with John A. Jackson, and Charles J. Tower.

"Also offer deed dated the 14th of April, 1875, from Julia Ann Tower, widow of Jeremiah Tower, deceased; Elizabeth B. Jackson and John A. Jackson, her husband; Jane Herron and Charles D. Herron, her husband, and Charles J. Tower, all of the City of Pittsburgh, heirs and legal representatives of Jeremiah Tower, deceased, to R. M. Cummings for the undivided two-thirds part of a tract of land surveyed on a warrant issued to Lewis Walker, dated November 26th, 1793, and patented to Peter Grahl, together with other parcels of land. Acknowledged the 14th of April, 1875, in the county of Allegheny and state of Pennsylvania; recorded in Northumberland County, in Deed Book Vol. 70, page 336, &c., on the 20th of August, 1875.

"This evidence to be followed by proof that these defendants took actual possession of said lands in March, 1875, described in the foregoing conveyances; paid taxes by redeeming the said lands from tax sales; made improvements, expended large sums of money in opening coal mines, and have since and do now hold actual possession of said lands.

"Also to be followed by evidence that Nicholas LeFavre had personal notice of the title under the patent issued (by the Commonwealth of Pennsylvania) to Peter Grahl, and its

conveyance to Tower, in October, 1814, by a letter from Hugh Bellas to N. LeFavre, bearing date October 7, 1814.

"Also to be followed by proof that at the Sheriff's sale, when the plaintiffs in this case purchased in 1872, notice was given to bidders of the title of these defendants.

"Plaintiffs' counsel object,

"Because the testimony offered is irrelevant and incompetent.

"Objections sustained, evidence rejected and bill sealed for the defendants."

(See Print 50 and 51; Original 147–151.)

SEVENTH.—The Court erred in charging the jury as follows:

"The plaintiffs put in evidence a certified copy of an ancient paper dated November 26, 1793, on file in the Land Office, designated as old purchase voucher No. 12969, and in connection therewith a certified copy of an entry under date of June 14th, 1794, from the old purchase blotter in the Land Office. These documents were offered to show, and they are evidence tending to show, that Dr. Thomas Ruston was the owner of the Lewis Walker warrant and paid to the Commonwealth the purchase money for said tract of land."

(See Print 56; Org'l 170, 171).

EIGHTH.—The Court below erred in charging the jury as follows:

"The plaintiffs have shown that by sundry mesne conveyances the title which Nicholas LeFavre thus acquired became vested in them prior to the bringing of this action. In connection with their paper title the plaintiffs gave evidence tending to show that for many years they, and those under whom they claim, asserted title to the land and paid taxes thereon without any hostile claim being set up against them until the year 1875, when the defendants took possession. If the evidence on the part of the plaintiffs is believed by the jury it makes out a *prima facie* case for the plaintiffs, and they are entitled to your verdict on this branch of their title."

(See Print 57; Org'l 172).

BRIEF OF ARGUMENT ON THE PART OF THE PLAINTIFFS IN ERROR.

The recovery of the land in dispute by Dater and Fellows in the Circuit Court was based wholly upon an alleged equity against the legal title in Jane Herron and her co-tenants, under the grant from the State. The equity relied upon was a memorandum in a book or blotter found in the Land Office of Pennsylvania, called old purchase blotter, or John Keble's blotter. In regard to the legal value of this memorandum the late Jeremiah S. Black, while Chief Justice of Pennsylvania, in delivering the opinion of the Court in Strimpfler v. Roberts, (18 Pa. St., 297), said: "John Keble's blotter, and other books in the Land Office, show that Benson was charged with the price of this warrant and that he paid it. This blotter was never considered a record; and certified copies were not admitted in evidence until the Act of 1823 was passed for that purpose: Purdon, 427. Previously to that time the entries were proved and admitted as private papers: 8 Watts, 112. The Act of Assembly did not change their nature as evidence, but only furnished a more convenient means of getting them before courts and juries. They were admitted before and since 1823, apparently upon the rule which admitted other private memoranda of deceased persons in evidence where they were against the interest of the persons making them. But long experience of their accuracy has given them a credit which no other official books have received in our courts. Still they are but parol evidence, and are not conclusive proof of anything. That warrants were frequently said by those books to have been paid for by persons who did not actually advance the money, except as agents, no one can doubt; and the fact has been often proved."

The entry in the purchase blotter relied upon in the case at bar does not identify the tracts, except only the number at the top of the entry—12969—which is the same figures as stand

on the statement or entry called the purchase voucher. But the entry in the blotter does not show the amount of money paid.

It is: "Fees 60 s p'd; rem'r ch. of 168 D's. Rec't d'd."

We understand from the abbreviated terms that it means that the fees of 60 shillings were paid, and that the balance on the warrants of $168 remained charged against the land. One point is certain, that if a receipt for the amount actually paid was delivered to Dr. Ruston, its production would show what was the precise amount paid and upon what account it was to apply; and if Dr. Thomas Ruston had paid any money to the Commonwealth on the purchase money due on the Lewis Walker tract, the receipt would have been preserved by him and his assigns to prove his ownership in opposition to the application, the warrant and the survey of the Lewis Walker, all of which show he had no ownership of the tract. No extrinsic proof was offered by the plaintiffs below to explain the indefinite terms of the blotter entry they rely upon, or that Ruston had any connection with the application, warrant or survey of the land now in dispute.

If Dr. Ruston did make payment of the purchase money on the Lewis Walker tract by mistake, or without the authority of the owner, then such payment can give him neither title nor equity. It would be simply a volunteer payment, and he could derive no possible benefit from it.

On the other hand if the payment of the purchase money was made by Ruston, and he made it with the approval of the owner of the tract, the legal title would still remain in Lewis Walker or his vendee under the application, warrant and survey, but Ruston might acquire a resulting trust in the tract by reason of his thus making payment of the purchase money. But Ruston never did anything to enforce his trust, if he ever had any. The evidence is clear that the land in dispute remained unoccupied and unimproved—unseated, as it is termed under the statutes of the state—until actual possession was taken of it in 1875 by the plaintiffs in error. The lapse of twenty-one years bars this equity if it ever existed in Ruston. "In short the Courts of this State" (Pennsylva-

nia) "seem uniformly (and especially of late) to have refused to go back more than twenty-one years to settle any difficulty about the issuing of warrants or patents, or the making or returning of surveys, or the payment of purchase money to the Commonwealth."—Strimpfler vs. Roberts, *supra.*

Caul v. Spring, 2 Watts, 390.
Kisler v. Kisler, ibid, 323.
Nieman v. Ward, 1 Watts & Sergeant, 68.

The Act of Assembly approved 22 April, 1856, P. L. 532, now bars the enforcement of any implied or resulting trusts as to realty after five years. The 6th section of that act reads:

"No right of entry shall accrue or actions be maintained for a specific performance of any contract for the sale of any real estate, or for damages for noncompliance with any such contract, or to enforce any equity of redemption after re-entry made for any condition broken, or to enforce any implied or resulting trust as to realty but within five years after such contract was made or such equity or trust accrued, with the right of entry; unless such contract shall give a longer time for its performance, or there has been in part a substantial performance, or such contract, equity of redemption, or trust, shall have been acknowledged by writing to subsist by the party to be charged therewith, within the same period: Provided, That as to any one affected with a trust by reason of his fraud, the said limitation shall begin to run only from the discovery thereof, or when by reason of diligence, the party defrauded might have discovered the same; but no *bona fide* purchaser from him shall be affected thereby or deprived of the protection of the said limitation: and provided, That any person who would be sooner barred by this section, shall not be thereby barred for two years from the date hereof."

Upon this act the Courts of the State have held: That a bare entry by the *cestui que trust* without a following possession will not prevent the bar of the act—Douglas v. Lucas, 63 Pa. St. 9; and if there be neither entry nor possession taken by the party to whom the trust results, within five years after it accrues, and no acknowledgment in writing, the trust cannot be asserted against the trustee: Clark v. Trindle, 52 Pa. St. 492; Best v. Campbell, 62 ibid, 476.

Hence, even granting that Dr. Ruston had paid the purchase money on the Lewis Walker tract, on June 14, 1794, and allowed the application, warrant and survey to be in Lewis Walker's name, he and those claiming under him are barred after the lapse of twenty-one years, under the decision of the courts, and in two years from 22d April, 1856, by the statute of that date.

It cannot be questioned that the application of Lewis Walker and the warrant issued to him and the survey made for him on the 22d October, 1794, gave him the title to the land against all except the Commonwealth. Judge Sergeant, in his "View of the Land Laws of Pennsylvania," page 150, Ed. of 1838, says: "Under every mode of obtaining vacant lands from the proprietaries by warrant, application and survey, settlement or otherwise, and from the Commonwealth since, the legal title as between them and the grantee or settler, remained in the proprietaries or Commonwealth until a patent issued. Before that time the warrantee or applicant or settler had only an inchoate or inceptive title, which came in process of time to be decreed an equitable title, which courts would enforce. Now (1838) it is considered a legal title against all but the Commonwealth," citing Duer v. Boyd, 1 Serg. & Rawle, 202.

Hence Ruston's payment of the purchase money, if admitted to have been done by him, gave him nothing but an implied trust in the land, and he allowed title from the State by the application, warrant and survey to go to Lewis Walker; and the survey made for Walker and returned in his name was in October, 1794, about four months after the alleged payment by Ruston.

We therefore contend that the admission as evidence by the Court below of the entry in the purchase blotter bearing date 14th June, 1794, without showing or offering to show possession taken and maintained by Ruston or patent issued to him was error, because it did not show or tend to show of itself, title in Ruston.

We also contend that the refusal of the Court below to admit in evidence the Patent from the Commonwealth to Peter Grahl, issued 12th April 1797, for the tract in dispute, was plain error.

The Act of Assembly of 8th January, 1791, (3 Smith's Laws, 2) required the Governor of the State to sign patents granting lands and the great seal of the state to be affixed.

Sergeant on Land Laws of Pennsylvania defines the term—"The Patent is a deed from the Commonwealth, under its great seal, conveying to the grantee all its right in the land, describing it by metes and bounds, and passes as respects the Commonwealth, the complete legal title, all the preparatory measures of warrant, application, survey and acceptance being merged in the patent. As to third persons, it is *prima facia* evidence, that all the previous requisites had been complied with."—page 155.

In Strimpfler v. Roberts, *supra*, the Court, in discussing the rights of property of the patentee under the patent issued to him by the Commonwealth, although he had neither taken actual possession of nor paid taxes on the land, say: "But it must be remembered that the conveyance of the warrantee, and the patent from the Commonwealth, gave him the legal title, and he was in possession by construction of law. Actual possession would not have made right any stronger as against another claimant who was not himself in possession. His title on the face of it, was as perfect as it could be made. He needed no judgment or decree of any court to make it better. It was not necessary or possible for him to bring suit against Benson or his heirs or aliences to establish that his legal estate was free from the trust, which the plaintiffs assert it was charged with. His non-payment of taxes is proof that he was not a very good citizen; but that is a default for which his title could only be divested by a treasurer's sale. On the other hand, Benson and his heirs had a claim resting in parol, and if they knew or believed it to be just, it was their business to make it appear."—18 Pa. St., 300.

In Riddle vs. Albert, 14 Serg. & Rawle, 344, the plaintiff claimed title to the land under a warrant dated March, 1794, on which a survey was made May 28, 1795, and regular chain of title from warrantee to him, but the land had not been settled or any patent obtained. The defendant gave evidence of a settlement made upon the land in 1798 or 1799, a warrant to him, dated March 25, 1818, survey April 13, 1818, and a

patent May 13, 1818. The Court of Common Pleas rejected this evidence on the ground that the defendant had not taken out a vacating warrant before his settlement warrant, as required by the Act of 3d April, 1792. The Supreme Court of the state reversed upon this ruling of the Common Pleas, and say: "Whether the defendants' title would have been good, on the disclosure of all the circumstances of his case, is not now to be decided; but surely he had a right to show that the legal title had been granted him by the Commonwealth. This has always been the course of proceeding, and, when all the evedence has been given on each side, it is for the court and jury to decide whether the legal estate granted by the patent shall yield to the equitable right of the adverse party. There was error therefore in rejecting the defendants' evidence, for which the judgment must be reversed."

In the case at bar, the patent issued by the Commonwealth to Peter Grahl for the Lewis Walker tract on April 12, 1797, contains the recital "That in consideration of the moneys paid by Lewis Walker into the Receiver General's office of this Commonwealth at the granting of the warrant hereinafter mentioned, there is granted by the said Commonwealth unto Peter Grahl a certain tract of land," (describing the same by metes and bounds) "containing three hundred and seventy-one acres, one quarter of an acre, and allowance of six per cent. for roads, &c., which said tract was surveyed in pursuance of a warrant dated 26th November, 1793, granted to the said Lewis Walker, who by deed dated 27th November, 1793, conveyed the same to the said Peter Grahl with the appurtenances. In witness whereof Thomas Mifflin, Governor of the said Commonwealth, hath hereto set his hand and caused the state seal to be hereto affixed," &c. (See copy of Patent in Appendix.)

This solemn grant from the state refers back, in transfering the legal title to Peter Grahl for the land now in dispute, to the date of the application and warrant, to wit, November 26, 1793, and of course, overreaches the parol claim of equitable title of Dr. Ruston founded on the blotter entry of June 14, 1794. This principle has been expressly recognized in the case of Lessee of Cherry vs. Robinson, 1 Yeates, 525, by

McKean, C. J., as follows: "Here, then, independent of Hatfield's improvement, which need not be taken into view, the plaintiff has the earliest descriptive application; and his warrant, survey and patent, shall, like the different parts of a common recovery, *all refer back to the first act, and will therefore overreach the defendant's title.*"

The Circuit Court in the case at bar, rejected the patent attested by the hand of the Governor and the seal of the state, because it contained the recital of the conveyance from the warrantee to the patentee, although the date of the transfer was anterior in time to the date of the entry in the blotter.

The plaintiffs below do not allege fraud or mistake in obtaining the patent for the land in dispute; but demand the right to ask the patentee, after a silence of over eighty years, how he obtained his patent, although the patent was enrolled on the 18th of April, 1797, and this record has been since that date legal notice to the world of the contents of the grant to Peter Grahl.

Neither Dr. Ruston nor his alienees have asserted the title now set up and founded solely upon the entry in the purchase blotter, by any action at law or in equity until this action of ejectment was commenced in 1882; and this title, if anything, is only an equitable title, and this they oppose to the legal title in the defendants below, founded upon the assumption that the memoranda or recitals contained on the pages of the old purchase blotter are ancient documents more to be respected by the courts than the recitals contained in the patent to Grahl, attested at the time of its delivery by the hand of the Governor and seal of the state.

But the only title shown by the plaintiffs below being an equitable one, how can they sustain an action at law upon this equity in the U. S. Circuit Court?

"In actions of ejectment in the United States courts, the strict legal title prevails. If there are equities which show the right to be in another, these can only be considered on the equity side of the Federal courts."

Foster v. Mora, 98 U. S., 425.
Also, Gilmer v. Poindexer, 10 Howard, 257.
Shierburn v. Cordova, 24 Ibid., 423.
Singleton v. Gonchard, 1 Black, 342.
Steel v. Smelting Co., 106, U. S., 447.
Hickey v. Stewart, 3 Howard, 751.

"As there is no Court of Chancery under the laws of Pennsylvania, an action of ejectment is sustained on an equitable title by the courts of that state. Such is not the practice in the courts of the United States; and in this case, if the plaintiffs fail to show a paramount legal title in themselves, they cannot recover." Opinion of the court by McLean, J., in Swayze v. Burke, 12 Peters, 23.

A patent is a complete appropriation of the land it describes; and at law no defects in the preliminary steps can be tried. Boardman v. Lessees of Reed, 6 Peters, 328.

The other assignments of error need only to be briefly discussed. We contend that even if Nicholas LeFavre obtained any title under his purchase at marshal's sale and the deed of the marshal to him of October 11, 1803, that title never passed to Joseph Bobst under the deed from LeFavre's administrator of May 9, 1837, for the reason that there was no jurisdiction in the Orphans' Court of the city and county of Philadelphia, or in the Orphans' Court of Northumberland county to authorize a sale of the real estate of LeFavre by his administrator for the payment of the debts of the decedent. LeFavre died in 1815. The application of his administrator for an order for a sale of his real estate for the payment of his alleged debts was not until 1836, and these debts do not appear to have been in the form of judgments or mortgages, but the record shows that they were not debts of record. The Act of Assembly of Pennsylvania, approved February 24th, 1834, sec. 24, provides, "No debts of a decedent except they be secured by a mortgage or judgment shall remain a lien on the real estate of such decedent longer than five years after the decease of such debtor, unless an action for the recovery thereof be commenced and duly prosecuted against his heirs, executors or administrators within the period of five years after his decease," &c.—P. L., 77.

The previous Act of 1797 was the same in terms, excepting the period of limitation was seven years.

After the expiration of seven years, or under the Act of 1834 five years, the land belonging to a decedent's estate is

discharged from the lien of his debts even in the hands of the heirs or devisees.

Kerper v. Hoch, 1 Watts, 14.
Quigley v. Beatty, 4 Ib., 13.
Hemphill v. Carpenter, 6 Ib., 22.
Wallace's Appeal, 5 Pa. St., 103.
Loomis' Appeal, 29 Pa. St., 237.
Bindley's Appeal, 69 Pa. St., 295.

The Orphans' Court never confirmed the sale to Bobst. The petition of LeFavre's administrator to the Orphans' Court, upon which the order to sell was granted, upon its face showing that the debts of the decedent were all barred by the statute, such order was void for want of jurisdiction in the court to grant it, and the sale to Bobst was in like manner void. The validity of such sale may be contested in any case involving title to the land sold.

Stoolfuss v. Jenkins, 8 S. & R., 173.
Dresher v. Allentown Water Co., 52 Pa. St., 229.
Torrence v. Torrence, 53 Ibid., 510.
Thompson vs. Still, 56 Ibid., 160.
York's Appeal, 17 W. N. C., 17 & 33.
Sherman v. Farmers Bank, 5 W. & Serg., 373.

The policy of the Act of 1834, as well as that of 1797, was intended not merely to limit the lien of the debts of a decedent, but to limit the liability of the real estate for the payment of the debts.

Clauser's Estate, 1 Watts & Serg., 215 & 293.
Baily v. Bauman, 6 Ibid., 118.

The plaintiffs below showed assessment of taxes upon adjoining lands to the Northumberland Coal Company as evidence of acts of ownership exercised by the Columbia Coal Company over the land in dispute. These two companies are distinct in their charters and in the property they claim to own. If assessments of taxes to the Northumberland Coal Company for the William Elliot tract may be given in evidence to show claim to title to the Lewis Walker tract by the Columbia Coal Company, there is no limit to which such a precedent may not be carried. The plaintiffs below claim title

through the Columbia Coal Company to the lands in dispute, and they did not show assessment of taxes to or payment of taxes by that company.

Again, plaintiffs below had offered evidence (Print 17, original 51), to show that by the proceeds of the Marshal's sale of Dr. Ruston's lands, taxes were paid to John Boyd. They also read from return of William Gray, deputy surveyor, to the commissioners of Northumberland county of February 23, 1795, for purposes of taxation, four tracts, including the Lewis Walker, (Print 14, origiual 45). This evidence was admitted by the court below to show acts of ownership on the part of the plaintiffs. We contend that this testimony had very little, if any, value for the purposes for which it was admitted. The plaintiffs below further offered book of returns of unseated lands by deputy surveyors of Northumberland county, and read from return of William Gray of January 26, 1796, for the purpose of showing acts of ownership by Dr. Ruston and those claiming under him, and to be followed by evidence that prior to 1864 the four tracts mentioned, including the Lewis Walker, were wild and uncultivated. But when the returns of the deputy surveyor are read, neither the name of Dr. Ruston nor any one who claimed under him is mentioned in connection with the land, and the same is the case with the assessment books of Northumberland county read in evidence covering the years from 1796 to 1805 inclusive. (Print 38, original 116 & 117).

The plaintiffs below failed to show any assessment of taxes on the land in dispute which connects it with Dr. Ruston as owner, and they admit that the land was wild and uncultivated, and they utterly failed to prove that Ruston or any one claiming under him ever had or attempted to take possession of this land, except the attempt to oust the defendants below from possession in 1875.

We contend that the Court below committed error in not allowing the defendants to read from other parts of the same return made by William Gray, deputy surveyor, January 26th, 1796, to show that there were two Lewis Walker tracts in the same county, and if Dr. Ruston claimed a tract in that warrantee name, it was uncertain which of the Lewis Walkers he

did claim. The counsel for the defendants below also desired to show by the assessment books that the marks on the same relating to the payment of taxes to B. and to S. indicated that Ruston claimed the other Lewis Walker tract, and not the one covering the land in dispute. (Print 47, 48, 49; Original 137 to 144 inclusive.)

These offers of evidence were rejected by the Court below. It seems plain error that if the plaintiffs in the trial of this case read a part of a paper or document, such as the return of William Gray, deputy surveyor, and the defendants in the same trial propose to read other portions of the same paper or document relating to the same subject matter, and for the purpose of explaining that part read by the other side, they should be denied this plain right. These rulings of the Court below are covered by the assignments of error, and we contend that these assignments must be sustained.

R. P. ALLEN,
A. H. DILL,
JOHN G. READING, JR.,
Attorneys for Plaintiffs in Error.

APPENDIX.

COPY OF PATENT TO PETER GRAHL.

THE COMMONWEALTH OF PENNSYLVANIA.

To all to whom these presents shall come greeting:

KNOW YE, That in consideration of the monies paid by Lewis Walker, into the Receiver General's office of this Commonwealth, at the granting of the Warrant hereinafter Mentioned, there is granted by the said Commonwealth to Peter Grahl a certain tract of land, called "Brookland" situate on Catawissey Township in the County of Northumberland, Beginning at a post, thence by land of Nathaniel Brown North seven degrees West one hundred and thirty-seven perches to a post, thence by land of Thomas Ruston West one hundred and ninety-one perches to a post, thence by land of Mary Ruston South thirty-three perches to a post, thence by the respective lands of Mary Ruston, Thomas Billington and John Renolds West five hundred and forty-two perches to a post, thence by land of William Elliot South ten degrees West one hundred and twelve perches to a post, thence by land of Jesse Brook and land of Doctor Thomas Ruston, in right of William Shannon North eighty degrees, East five hundred and sixty-nine perches to a post, South ten degrees East one hundred and seventy six perches to a post, and thence by land of Peter Smith and Robert Gordon, North eighty degrees, East one hundred and eighty nine perches to the Beginning, Containing three hundred and seventy-one acres one quarter of an acre and allowance of six per cent for roads &c. Which said tract was surveyed in pursuance of a Warrant dated 26th November 1793, granted to the said Lewis Walker, who by deed dated 27th November 1793 conveyed the same to the said Peter Grahl with the appurtenances.

TO HAVE AND TO HOLD the said Tract or Parcel of Land, with the appurtenances, unto the said Peter Grahl and his heirs to the use of him the said Peter Grahl his heirs and

assigns forever, FREE AND CLEAR of all restrictions and reservations, as to mines, Royalties, Quit-rents, or otherwise, excepting and reserving only the fifth part of all Gold and Silver ore, for the use of this Commonwealth, to be delivered at the pit's mouth, clear of all charges.

IN WITNESS WHEREOF, Thomas Mifflin Governor of the said Commonwealth, hath hereto set his hand and caused the State Seal to be hereunto affixed the Twelfth day of April in the year of our Lord one thousand seven hundred and ninety seven and of the Commonwealth the twenty first.

Attest: JAMES TRIMBLE,
Deputy Sec'y.

THO. MIFFLIN.

Inrolled 18th day of April 1797. [SEAL.]

I do hereby certify that the within is a true copy of a Patent as is recorded in Patent Book P, No 31, page 412, and now remaining in the Surveyor General's office of Pennsylvania.

In testimony whereof I have hereto set my hand and caused the seal of said office to be hereto affixed
[SEAL.] at Harrisburg this 17th November A. D. 1855.
For J. Porter Brawley S. G.

WM. D. EARNEST.

CERTIFIED COPY OF OLD PURCHASE BLOTTER.

1296

1794.
June 14. } H. Ruston 6 W. ts of 400, ca. Amo't:
2400 a 50 f. pe't f. d. specie ch. £60—

Fees 50 f. f. d. rem'r Ch. of 168 W's.

Rec't d. d.

I do hereby certify that the above is a true copy of an entry in Old Purchase Blotter No, 5, and now remaining in the Surveyor General's Office of Pennsylvania.

In testimony whereof I have hereto set my hand and caused the seal of said office to be hereto affixed at Harrisburg this 9th day of February, 1850.

[SEAL.]

J. Porter Brawley, S. G.

120-4

Office Supreme Court U. S.
FILED.
JAN 6 1887
JAMES H. McKENNEY.
CLERK.

DEFENDANTS' BRIEF.

Supreme Court of the United States.

October Term, 1885, No. 399.

JANE HERRON AND CHARLES D. HERRON, HER HUSBAND, IN RIGHT OF SAID JANE; ELIZABETH B. JACKSON AND JOHN A. JACKSON, HER HUSBAND, IN RIGHT OF SAID ELIZABETH B.; CHARLES J. TOWER AND R. M. CUMMINGS, Plaintiffs in Error,

VS.

PHILIP DATER, AND ELIZABETH L. FELLOWS.

In Error to the Circuit Court of the United States for the Western District of Pennsylvania.

JOHN W. RYON,
SAMUEL LINN,
JAMES RYON,
Attorneys for Defendants in Error.

Standard Pub. Co., Pottsville, Pa.

Supreme Court of the United States.

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VS.

PHILIP DATER, AND ELIZABETH L. FELLOWS.

In Error to the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF OF ARGUMENT ON THE PART OF THE DEFENDANT IN ERROR.

The title of the Defendants in Error was a legal title based upon a warrant issued by the Commonwealth of Pennsylvania, a survey of the land in controversy and a return thereof to and the acceptance by the land office in 1795, and the payment of the purchase money by Dr. Thomas

Ruston, under whom the defendants in error claimed before the said warrant was issued. The defendants' title was accompanied with a continuous claim and acts of ownership from the date of the survey down to this trial, by payment of taxes for three-quarters of a century, and by sundry conveyances of the land for large and valuable consideration during that period, when it became vested in the defendants in error in 1864, for the sum of $250,000.00, and the present defendants in error expended in improvements in the development of the mineral rights upward of $50,000.00 after they became the purchasers. The plaintiffs in error on the other hand never paid taxes nor asserted ownership for three-quarters of a century, and the first step ever taken in the assertion of any right under their claim of title was in 1875, when they took forcible possession of the land.

It is claimed by the defendants in error:—

1. That a warrant, survey and return thereot, and acceptance by the Commonwealth and the payment of the purchase money by Dr. Ruston vested a legal title in Dr. Ruston, whose title the defendants in error hold.

2. The patent offered by plaintiffs in error was fraudulently procured by Peter Grahl, but whether fraudulently procured or not, under the laws of Pennsylvania and decisions of her courts as well as the decisions of this court enures to the benefit of the title of defendants in error.

3. That as Dr. Ruston was the owner ot the title under the warrant and survey, the judgment of 13 October, 1796; No. 44, April session, 1796, Clayland for use of Gibson vs. Thomas Ruston, in the Circuit Court of the United States, Eastern District of Pennsylvania, became a lien thereon, prior to any right under the patent in 1797

to Peter Grahl, and the sale by the Marshal of the Eastern District of Pennsylvania, to Le Favre, under whom the defendants in error hold, the whole title, as well the Grahl title under the patent as the title of Dr. Ruston became vested in the purchaser Le Favre under whom the defendants in error claim.

If these propositions are sustained then the plaintiffs in error were defending without evidence or color of title.

In discussing the question raised we will follow the order of the assignment of error.

The first assignment is to the admission of the certified copy of the old Purchase Blotter in evidence to show the payment of the purchase money to the Commonwealth, by Dr. Thomas Ruston, on the 14th June, 1794. The objection was, and the argument now is, that the warrant was issued 26th November, 1793, and the payment of the purchase money by Dr. Ruston, 14th June, 1794, by mistake or without authority of Lewis Walker, would not give Dr. Ruston either title or equity.

The seventh and eighth exceptions are to the charge of the court, and embrace the same subject matter, and hence the three exceptions will be considered together.

The assumption that the six warrants, Joseph Tyson, William Elliot, Lewis Walker, William Shannon, Nathaniel Brown and Ebenezer Branham, were issued to the warrantees on the 26th November, 1793, is a mistake, and has misdirected the whole argument of the plaintiff in error.

The old Purchase Voucher and the entry of same number in the old Purchase Blotter are cotemporaneous papers. The old Voucher was made out by the Secretary of the Land Office from the application for warrants, and which was a copy of the application, if all

the warrants were issued, but if not a copy of so many as were issued, and sent to the Receiver General, in order that the purchase money might be paid to the Receiver General who had the right to receive the purchase money. Judge Huston, in his treatise on Pennsylvania Land Titles, gives the practice of the Land Office, page 443, as follows:

"After the Revolution, when warrants issued under the acts of assembly, the purchase money was paid on every one before the warrant was sealed. The application and entry in the books of the Secretary of the Land Office, continued as before the war. The warrant was carried to the Receiver General, or filled up by him, and then he received the price, and affixed the lesser seal of the state on it. It was then signed by the Governor; (since by act of Assembly, by one of the officers of the Land Office;) this was directed to the Surveyor General who entered it in his book, and endorsed the county, number of acres and date on the back of it. This is what is called the original warrant, and it remained in the Surveyor General's office. The Surveyor General made out an exact transcript of it, directed to A. B. Surveyor of the District in which it lay; "execute this warrant and make return of survey according to law."

From this voucher with the original warrant John Keble made an entry in a day book which he kept as chief clerk in the Receiver General's office, showing the number of warrants, acres, who paid the purchase money, &c., and this day book was called "The Old Purchase Blotter." Keble also made the entry on the voucher of the same number as of the entry in the blotter, as in the present case it is No. 12.969, see printed ev. 12, *miscalled application*, and also generally entered on the voucher the amount of purchase money and its payment, by the short

statement. "A general receipt wrote," as in the present case, and meaning that the fees and purchase money were paid in full. These two papers were resorted to, to show payment of purchase money and Keble's blotter always showed who paid it.

These two papers were received in evidence by our courts to show ownership of warrants and certified copies were made evidence by the act of 1823.

They were offered in evidence in this case for this purpose, and no evidence was given or offered to contradict this effect; under such a state of facts the prima facie case, became conclusive proofs, and they were properly admitted and the charge of the learned court was entirely correct, and the learned court could have said no less. The case of Oliphant vs. Ferren, 1 Watts, 57, decides that copies of entries in the books of the land office (meaning John Keble's blotter), duly certified are competent evidence to prove the real owner of a warrant. This case presents the practice of the land office and the value of Keble's blotter, for which we respectfully refer the court. We quote from the opinion of the court: "Before this act, the possession of the original receipt for the purchase money, or the testimony of J. Keble in his lifetime, or proof of his hand writing and entry in these books was evidence. This act, it is notorious, had an especial reference to these books, and since its enactment such copies are evidence; not conclusive, but are evidence of who paid the money on any warrant or list of warrants. Most of the warrants which issued from 1784 till 22d September, 1794, issued in the names of persons who had no interest in them, and *often in ficticious names.* The real owner procured conveyances from the warrantee when he

was going to patent or sell; but many have never been sold or patented, and many owners of warrants and land became insolvent or are dead. Attempts to prove ownership of warrants surveyed and returned, but not claimed by any person, have occurred in cases fair and honest, and in cases not of that description; proof of who actually paid for a warrant, is among the most *unequivocal evidence of membership*, though not always conclusive. The dates appear wrong, but are easily understood when we understand the practice of the land office. The last part of the document, and the last of the applications for warrants is dated 5th of April, and filed on that day in the office of the Secretary of the land office. Although it gave no right until the purchase money was paid to the Receiver-General, yet the practice was (I don't say it was a good one), to give the warrant when it was issued some weeks or months after the date of the application, and the title to the land has turned on the proof of this fact. The paper offered was evidence."

Although the statute of Pennsylvania permits only one warrant to issue to the same person, yet, by the universal practice under the law, an individual may take out any number of warrants in the name of different persons, who are considered as merely nominal and trustees for him who pays for the warrants and has them executed.

Huidekoper vs. Burrus, I Wash. C. C. R., 257.

It is not necessary to produce the deed poll, from the person in whose name the application was made for a tract of land, in order to support the title of the plaintiff in an ejectment for the land; the plaintiff having obtained the warrant and paid the purchase money.

Willink vs. Miles, Peters C. C. R., 429.

This court decided in Evans vs. Patterson, 4 Wallace Rep., 224, Grier, Justice, as follows :

"Pennsylvania, until late years, had no courts of equity. Hence, in an action of ejectment, the plaintiff might recover without showing a legal title. If he had a prior inchoate or equitable title, either as a trustee or cestui que trust, he might recover. The courts treated the applicant, or warrantee, as trustee for the party who paid the purchase money, or paid even the surveying fees; for the purchase money, under the location or application system, was not paid at the time, and sometimes never. When the State succeeded to the title of the proprietors, the application system was abandoned, and warrants were granted on payment of the purchase money for the number of acres for which his warrant called. Hence, where the claimant of the warrant was unable to show his deed poll, he might recover by showing that he paid the purchase money; that the warrantee, whose name was used, was therefore trustee for him. And an ejectment might also be maintained in the name of the warrantee, although he had no beneficial interest in the land and no knowledge of the institution of the suit. See Campbell vs. Galbreath, 1 Watts, 78, and also Ross vs. Barker, 5 Watts, 391, which was decided on the title now in question."

A warrant, since the Commonwealth succeeded to the titles of the proprietors, was not issued until the purchase was paid. The remarks of the learned counsel on the other side, that the words 'rem.ch. of 168 D's" in the old purchase blotter, "*means remainder of the purchase money was charged*" and not paid, are not supported by authority or the practice of the Land Office. The contractions will bear no such meaning. They mean the remainder of the charge was 168 dollars. Written out, the

entry means: Dr. Ruston purchased 6 warrants of 400 acres each; amount of acres, 2,400; at 50 shillings per 100 acres; paid for in specie; whole charge 60 pounds. The fees were 60 shillings paid, and the remainder of the charge (or the purchase money) was 168 dollars. The entry in the old purchase blotter and the entries made at the same time on the old voucher, show the purchase money paid. The entry on the old voucher is: "Genl. rec't wrote," which means that the fees and purchase money were paid and a general receipt for both were given. The following decision will explain the practice of the office at that period.

Justice Washington, in Brown vs. Galloway, Peters, C. C. R., 291, said: "A warrant for land is, according to long and uniform practice, dated on the day the application is made for the land, although it is retained in the office until the purchase money is paid, when and not before it issues to the party."

Same effect is Lewis vs. Meredith, 3 Wash, C. C. R., 81.

It is an established rule of property in Pennsylvania, that the party who paid for the land was the owner of the warrant. This principle was established from reasons of policy and private justice. The deputy surveyor was restrained from surveying more than 400 acres to one person. The limit was 300 acres under the proprietary system. There was however no express limit to the amount one person might buy, and hence in the purchase of a large number of warrants, names of persons were used, often ficticious, and in the language of Justice Washington, in Huidekoper vs. Burrus, 1 Wash., C. C. R., page 114, "*whenever one person takes out many warrants, he borrows the names of certain persons, no matter who they are.*" It became a question very early to ascertain the owner-

ship of the warrant and this was ascertained by ascertaining who paid the purchase money. Often receipts were given with the number of warrants and acres, and when these were in existence they were sufficient. But time soon made this mode of proof, if it ever existed, impossible. John Keble was chief clerk in the Receiver General's office, and he kept a book in which he entered every purchase with its number, date, who was the purchaser and Nos. of warrants, acres, and who paid the purchase money. This from necessity was the only other evidence, and hence the courts resorted to it. In 1823 certified copies were made evidence. Judge Huston, in his work on land titles in Pennsylvania, says of this Old Purchase Blotter: "Even on warrants where money was paid, there was sometimes difficulty as to who was the owner. The warrant being in a name different from that of the claimant on its face, proved nothing. Where the owner, when he took out his warrant, took a receipt for his purchase money and preserved it, this often decided the question of ownership, and it became usual for a plaintiff to recover on such a receipt, without producing any conveyance from the person whose name was used in the warrant. But where the owner either took no receipt, or it was lost or mislaid, the ownership must be proved by other means. The common books of the land office charged the warrantee with the land and credited him with the payment of the money. When it became necessary to pay money before you got the warrant, and while John Keble was chief clerk in the Receiver General's office, he kept an account of who paid the money on every warrant sealed in that office. The entry, however, is not easily understood, except by those acquainted with the office. Every application was numbered successively, as they were handed in, from one up to near twenty thousand. Some of these applications were for a single tract,

and many for more than one hundred, the last written on a single sheet of paper, or several sheets attached together. On each of these was marked the date when filed, and the name of the man who paid the money always appeared. When you applied for a warrant, there were marks by which you could refer to and find the application, and from the application and its number and date, you could find the entry in John Keble's blotter, and there see who paid the purchase money. The right to many tracts has been ascertained by searching as here mentioned; and a copy of that blotter under seal of office, is now evidence in a court of justice, by a particular act of Assembly. So careful was John Keble that if the person who paid the money told him by whom it was sent, that also appeared in the blotter."

The plaintiff below offered old purchase blotter (called application) No. 12969, for six tracts of land of four hundred acres each, among them is the Lewis Walker tract, described in the application as follows: Lewis Walker applies for four hundred acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other land in Catawissa township, Northumberland county. Each of the six tracts calls for Dr. Thomas Ruston's other land, and contain evidence that the application was by and for Dr. Thomas Ruston.

This evidence was followed by certified copy of old purchase blotter No. 12969. The entry is as follows:

12969.

1794.

June 14, Dr. Ruston 6 wts. of 400 ea., amt. 2400 a 50 s pct. pd specie ch £60.

Rectd fees 60 s. pd Rem. ch of 168 Ds.

This entry clearly shows that Dr. Ruston bought and paid for the six tracts of land for which warrants were granted on application No. 12969, at the rate of fifty shillings per hundred acres the price fixed by an Act of Assembly of April 3, 1792.

Surveys were made upon the warrants in the month of October and November, 1794, (see printed record, page 14,) and returned into the land office 23d of February, 1795. The purchase money was paid by Dr. Ruston before the warrants were issued, and the old blotter not only showed its payment, but the fees for issuing the same and accepting the return of the surveys. The practice in the land office in respect to the payment of the purchase money before the warrants would be issued, is stated by Huston on Land Titles, page 323, in the following language: "I have reason to believe, and do believe, that after the 1st day of September, 1769, no warrant was sent to a deputy surveyor until the purchase money had been paid. The warrant, when made out, was dated on the day the application for it was entered, although the warrant itself was not filled up and signed and sealed until money was paid into the Receiver General's office." The copy of the old purchase blotter duly certified, under the seal of the land office, was offered in evidence as a link in the chain of evidence to show title in Dr. Ruston, under whom the plaintiffs claim title to the land in suit. The question was not as to the weight to be given to the entries in the blotter, but was the record evidence for the purpose of showing title in Dr. Ruston. The paper came from the depository where we go for original titles to every acre of land in the State of Pennsylvania. Copies of the old purchase blotter are made evidence by Act of Legislature of the State for the purpose of showing who paid for lands, and as a consequence who bought from the

State, paid the State the price demanded, and in law, and fact who the owner of the land was at the very inception of the title.

Certified copy of the entry would be evidence in any case, involving the ownership of the warrant, and it is always received even though it might not be very material, upon the ground that the entry by Keble was a part of the original transaction.

As evidence of the fact as to who paid the purchase money, Judge Huston says in his land titles, page 336, "It seems then, to come to this that it is prima facie evidence and conclusive unless rebutted."

Campbell vs. Galbreath, 1 Watts, 70, held that to establish ownership of warrant competent to prove in ejectment that they, under whom party claims, took it out of the office, put it in hands of Deputy Surveyor, employed chain carriers, procured survey to be made and paid expenses. This was admitted to show ownership of warrants.

Ejectment by the common practice in Pennsylvania, where more than one warrant issues to one person, who is considered merely as a nominal person, the title being in him who pays the money to the office and obtains the warrant. James vs. Gordon, 1 Wash C. C. R., 338.

The contention of the plaintiffs in error is that a warrant, survey and return thereof and payment of the purchase money gives only an equitable title and that an action of ejectment cannot be sustained on such a title in the Circuit Court of the United States, because the law side of that court cannot take jurisdiction of any but legal titles.

The court below thought differently and so ruled and it is no hard task to show by authority that that ruling was right.

The doctrine of trust discussed by the plaintiffs in error, we have discussed under the Fifth Assignment of Error. We will say, however, in passing that as Dr. Ruston paid the purchase money, took out the warrant, had the survey made and returned, he had the legal title as to every one but the Commonwealth. His interest was a legal estate, not an equitable one. Lewis Walker, if ever such a person existed, was a mere nominal party. His name was simply borrowed. He was without any interest whatever, as the records of the land office disclosed. The title therefore to the warrant and survey did not vest in Lewis Walker, even nominally, but in Dr. Ruston. This is the doctrine established in Pennsylvania, and also by the United States Courts, as we will show hereafter. The act of 22 April, 1856, applies to technical trusts. Trustees exmaleficio, which Lewis Walker would be if he or those claiming under him attempted to deny his nominal condition are not within the statute nor within the principle sought to be applied by the plaintiff in error.

It is true the general expression is often used that the warrantee holds in trust for the party who paid the purchase money, but the expression in our decisions is not used in the sense as expressing a trust relation.

What evidence is there that Lewis Walker ever knew that his name was used, or that Dr. Ruston paid with or without the approval of Walker? All this is mere assumption. As Lewis Walker never set up any claim, so far as the evidence shows, there is no presumption that there was a Lewis Walker in existence who had any knowledge of the fact.

But if we assume that there was a Lewis Walker, and his name was used by Dr. Ruston by consent, as the warrantee, and if we further assume, as argued by the plain-

tiffs in error, that Lewis Walker was the trustee of the interest in the warrant for Dr. Ruston, who paid the purchase money, and therefore the real owner, it follows that Lewis Walker was a mere naked trustee. The trust was a dry one; no control and no duty to perform by trustee, and under the Statute of 27 Henry VIII., commonly called the Statute of Uses, which is in force in Pennsylvania, (see Roberts' Dig. of British Statutes 412,) the trust was immediately stricken down and the use executed thereby making Dr. Ruston the complete owner of the lands as well at law as in equity.

2 Blackstone, 333.
Sprague vs. Woods, 4 W. & S., 192.
Kay vs. Scotes, 1 Wright, 31.
Bennett's Appeal, 10 Wright, 393.
Moore vs. Shultz, 1 Harris, 101.
Perry on Trusts, 521.

In Pennsylvania the trust is held to be completely executed by the statute and the legal estate and title is vested in the cestui que use; and that a bill in equity will not lie to enforce a conveyance by the cestui que use.

Bush vs. Lewis, 9 Harris, 72.

First. In Pennsylvania, in Duer vs. Boyd, 1 Sergeant and Rawle, 210, the Supreme Court said:

"For above fifty years past lands held by warrant and survey, without patents, have been considered as the legal estate in England, subject to the liens of judgments, courtesy, dower and other incidents of real property. Adapting this principle to the premises in question, there can be no doubt that Joseph Sharp took an estate tail under the will of James Sharp, his father, and that his son Joseph succeeded thereto per formam doni, the issue in tail not being barred by the conveyance to John Boyd.

The plaintiff has therefore deduced a regular title under his deed regularly perfected, to bar the estate-tail (according to the provisions of the law on this subject) from Joseph Sharp the second. The patent granted by the secretary of the land office to Jonn Boyd on the 15th May, 1810, recites that the right of James Sharp under his warrant, "by virtue of sundry good conveyances became vested in the said John Boyd, which was not true in fact, and can have no operation on the plaintiff's claim, in derogation of the last will of the warrantee. In all such cases the right does not depend on who has obtained the patent, but to whom the patent ought to have been granted, according to the known laws and usages of the state. It cannot be endured for a moment, that the decision of the land officers upon a contested title can conclude the rights of litigant parties. The remedy by an appeal to the ordinary courts of justice is still open to them."

Warrant, survey, return and acceptance in the land office vests a good title.

Lauman vs. Thomas, et. al., 4 Binney, 57.

Descriptive warrant, followed up by a survey within reasonable time, gives title from its date.

Fox vs. Lyon, 3 Casey, 9

Chambers vs. Mifflin, 1 Penr. and Watts, 74.

Bunting vs. Young, 5 W. & S., 188. Urket vs. Coryell, Id., 60, where warrant obtained in 1793, on which purchase money was paid, surveys made next month, embracing land in dispute and returned to land office, and accepted in February, 1794, there can be no such thing as abandonment by which the title is lost.

Jones on land office titles of Pennsylvania, page 162, CLV. "In this point of view, then and as between the

Land held under a special or descriptive warrant, may be levied upon and sold before survey.

Lewis vs. Meredith, 3 Wash. C. C. R., 81.

After application is made, it is expected that the applicant will proceed with all reasonable speed to pay the purchase money, which being done, the warrant to the surveyor issues, *but not before;* and though it bears date as of the day of the application it is, in fact and in truth, a warrant of the day on which the money is paid. It is expected that he will, with all reasonable diligence, proceed to perfect his title, by having a survey made.

Lewis vs. Meredith, above 85.

In Suydam vs. Williamson, 24 How., 427-435, "where the subject of the dispute is real property situated within a state, her laws exclusively govern in respect to the rights of the parties, the modes of the transfer, and the solemnities which should accompany them."

"The power to establish Federal Courts, and to endow them with a jurisdiction, affords no pretext for abrogating any established law of property, or for removing any obligation of her citizens to submit to the rule of the local sovereign.

"Where a contrary opinion to that expressed by this court has prevailed in the courts of a state, and become a rule of propriety there, this court, without re-examining their opinion, or making any attempt to account for or to reconcile the difference, will apply the rule adopted in such state, to the determination of controversies existing there."

In a controversy respecting the title to lands in a state this court will administer the law of the state in all re-

spects as if it were a court sitting there and reviewing the decree of an inferior court in that locality.

Olcott vs. Bynum, 17 Wall., 44.
Slaughter vs. Glenn, 8 Otto, 242.

A title to lands can only be acquired and lost according to the laws of the state in which they are situate.

Clark vs. Graham, 6 Wheaton. 577.

It has been the uniform course of this court with respect to titles to real property, to apply the same rule that is applied by the state tribunals in like cases.

Waring vs. Jackson, 1 Peters, 571.
Davis vs. Mason, 1 Peters, 501.
Gardner vs. Collins, 2 Peters, 85.
Jackson vs. Chew, 12 Wheat., 153

In Hinde and Wife vs. Vattier, 5 Peters, 397, this court says: "There is no principle better established and more uniformly adhered to in this court, than that the Circuit Courts in deciding on titles to real property in the differferent states, are bound to decide precisely as the state court ought to do. The rules of property and of evidence, whether derived from the adjudications of the judicial tribunals of the state, furnish the guides and rules of decision in those of the Union, in all cases in which they apply, where the constitution, treaties or statutes of the United States do not otherwise provide."

The second assignment of error is founded upon an objection to the record and proceedings in the Orphans' Court of Philadelphia county, by which proceedings the estate and title of Nicholas Le Favre, in the Lewis Walker tract with others that he owned, was sold by his administrator and purchased by Joseph Brobst by deed, dated May 9th, 1837. The plaintiffs claimed the land in controversy under this sale. The objection was that the lien of the debts against the decedent was gone and as a consequence the Orphans' Court had no jurisdiction to make the order of sale.

(a) The Orphans' Court is a court of record having a seal, and its judgments and decrees have all the conclusive force and effect that the law gives to the common law courts. Its judgments therefore in all matters where it has jurisdiction of the subject matter are final and conclusive.

McPherson vs. Cunliff, 11 S. & R., 422.
Musselman's Appeal, 15 Smith, 480.
Hixey's ex. vs. Lanning, 13 Wright, 146.

One court cannot modify, disregard or set aside the judgments of another court of co-ordinate jurisdiction.

Doyle vs. Commonwealth, 11 Outerbridge, 20.

The objection to the record of the proceedings in the Orphans' Court is fully answered by the Supreme Court of Pennsylvania, in the case of Iddings vs. Cairns, 2 Grant, 88, the case decided that a decree of the Orphans' Court confirming a sale made under its order, for the payment of debts is conclusive evidence that the title of the

decedent was legally transferred to the purchaser whatever may be the right of the heirs to examine its regularity, it cannot be collaterally questioned by those who were not affected by the decree. In ejectments where one of the links of the plaintiff's title is an Orphans' Court sale, the defendant has no right to object that the decree was made more than seven years after the death of the decedent, or that the deed was not made to the person whom the administrator returned as the purchaser, as the defendants did not claim under Nicholas Le Favre as whose estate the land was sold, they cannot question the validity of the process by which the plaintiffs obtained his title. If the heirs of Nicholas Le Favre are content to let the proceedings remain unquestioned strangers to his title must be content.

Riland vs. Eckert, 11 Harris, 215.
Glass, et. al., vs. Gilbert, 8 Smith, 266.

The Orphans' Court of the several counties of Pennsylvania is expressly made a court record by statute. The act of 29th March, 1832, (see 2, Brightly's Purdon's Digest, page 1279, Pl. 3,) provides:

"*The Orphans' Court is hereby declared to be a court of record, with all the qualities and incidents of a court of record at common law; its proceedings and decrees in all matters within its jurisdiction shall not be reversed or avoided collaterally in any other court, but they shall be liable to reversal or modification or alteration on appeal to the Supreme Court as hereinafter directed.*

(b) The act of 16 June, 1836, defines the jurisdiction of the Orphans' Court, Sec. 19 of that act, (see 2, Brightly's Purdon, page 1280, Pl. 15.)

"The jurisdiction of the several Orphans' Courts shall extend to and embrace"

II. "The removal and discharge of executors and administrators deriving their authority from the Register of their county, and the settlement of their respective accounts."

III. "The distribution of the assets and surplusage of the estates of decedents after such settlements, among creditors and others interested."

IV. "The sale of real estate of decedents."

The act of 29 March, 1832, provides, Sec. 20; see Brightly's Purdon's, page 531, Pl. 120.

"Whenever it shall satisfactorily appear to the executor or administrator that the personal estate of the decedent is insufficient to pay all just debts and the expenses of the administrators, he shall proceed, without delay, in the manner provided by law, to sell under the directions of the Orphans' Court, having jurisdiction of his accounts so much of the real estate, as shall be necessary to supply the deficiency; and such real estate so sold, shall not be liable in the hands of the purchaser for the debts of the decedent.

Sec. 31, Purdon, 532, Pl. 121. The Orphans' Court, which shall possess jurisdiction of the accounts of an executor, administrator or guardian, shall have power to authorize a sale or mortgage of real estate by such executor, administrator or guardian in the following case, viz:

1. On the application of the executor or administrator, setting forth that the personal estate of the decedent is insufficient for the payment of debts and maintenance and education of minors, or for the purpose of paying the debts alone."

2. "On the application of such executor or administrator, or of any person interested, setting forth that on final

settlement of the administrator's account, it appears that there are not sufficient personal assets to pay the balance appearing to be due from the estate of such decedent either to *the accountant or others.*"

Ibid, 32 Pl. 122. "When the real estate, with respect to which application shall be made to the Orphans' Court in the cases mentioned in the preceding section, is situated in the same county, the said court may order the sale or mortgage of such part or so much of such real estate as to them shall appear necessary; when the real estate is situated in another county or counties, or in the same or in the same or another county or counties, and the Orphans' Court which possesses jurisdiction over the accounts of such administrator, executor or guardian, shall be satisfied of the propriety of a sale or mortgage of some portion of such real estate not within their jurisdiction, it shall be lawful for such court to make a decree authorizing such executor, administrator or guardian to raise so much money as the said court may think necessary, from real estate situated in such county or counties as they may designate, and thereupon it shall be the duty of the Orphans' Court *of the county wherein the real estate so designated is situated*, upon the petition of such executor, administrator or guardian, to make an order for the sale or mortgage, as they shall think expedient. of so much and such parts of such real estate as shall, in their opinion, be necessary to raise the specified sum; and such executor, administrator or guardian shall in all cases *make return* of his proceedings in relation to such sale or mortgage, to the Orphans' Court of the county in which the real estate so sold or mortgaged lies, when, if the same be approved by the court, it shall be confirmed."

These statutes give to the several Orphans' Courts ample and express jurisdiction to decree the sale of real es-

tate to pay debts of decedent where the executor or administrator has filed his account showing debts due to *himself* or others, and there are not sufficient personal assets, the court shall decree the sale of the real estate of the decedent.

Wm. R. Smith, the administrator cum testamento annexo, 16 Jan., 1818, filed his final account in the Orphans' Court, of Philadelphia, the place of residence of Nicholas Le Favre, at the time of his death, showing the disposition of the personal estate, it being very small, and also the balances due to himself and others after the exhaustion of the personal assets. This account was confirmed absolutely.

The accountant showing deficiency of assets and the amount of debts due by the estate to accountant is such a final settlement as is provided for in the 31 sec. of the act of 1832.

Peter Rhoads' estate, 3 Rawle, 435.

And the confirmation of the account without appeal or review was conclusive upon everybody.

Rhoads' appeal, 3 Wright, 186.

By the decree of the Orphans' Court the amounts due to Wm. R. Smith and others were debts of record of the same degree as final judgments and of the same conclusive character, and such debts were not within the language or the spirit or meaning of the act of 1834, which is an act of limitation only. The debts, confirmed as such in the final accounts of the administrators were debts of record and no time less than would raise the presumption of payment could affect them, which is twenty-one years.

The petition of the administrator asked for a sale for the payment of debts. The amount of debts were set out in the petition and otherwise the petition conformed to

all the requirements of the statutes. There is no question as to the jurisdiction of the court over the subject matter. This jurisdiction is expressly given by statute, and being within the jurisdiction of the court, the decrees of the court, are final and conclusive upon everybody. The only remedy is by appeal to the Supreme Court, within three years, or a bill of review within five years; and the cases cited by the other side show this and this necessarily must be so of all judgments and decrees of courts of record, and it is expressly so of the Orphans' Court under the statute of 1832, which proves "*that its proceedings and decrees shall not be reversed or avoided collaterally.*" As this was a sale for the payment of debts of the decedent, the presumption follows of their existence in a live form, and such as are not barred by the statute of limitation. On this question, the case of Torrance vs. Torrance, 53 Pa. St. R. 513 cited by the other side is decisive. The Supreme Court in that case said: "We are not unmindful that general jurisdiction over the subject protects the decrees of the Orphans' Court from being assailed collaterally. But this is not such a case. Had that application been to sell the testator's estate for his own debts, their existence might be presumed." Also, Dreisher vs. Allentown Water Company, 52 Pa. St. R. 229, Strong, Justice, said: "Orphans' Court decrees are doubtless conclusive. They cannot be impeached collaterally."

For a period of forty-five years this administrator's sale has remained unquestioned, and after that length of time only by strangers to Le Favre's title. No one interested has ever done so and strangers cannot. This title has been held and conveyed for large sums of money and heavy taxes paid upon the property by the respective owners on the faith of this decree; more than time enough to pre-

sume a conveyance from Le Favre's heirs, even without the administrator's sale, which conveyance is presumed to be lost, and this presumption is one of law, incapable of contradiction.

A brief reference to the authorities cited in the plaintiffs in error's brief will suffice.

The case of Kerper vs. Hoch, 1 Watts, 9, is to the effect that a judgment against an administrator for a debt of decedent, six years old, was not entitled to the fund raised by sheriff's sale of the purpart allotted to a son of decedent, by proceedings in partition, but judgments against the son, which were liens less than five years old, were entitled to the fund. The lien of the judgment against the administrator expired after five years.

This was a case stated and writ of error in *that case.* If however the lien of the judgment against the administrator had been kept alive, the result would have been different and within the case of Dresher vs. Allentown Water Company, 52 Pa. St. R., 225.

The case of Quigley vs. Beatty, Hemphill vs. Carpenter, Wallace's Appeal, Loomis' Appeal and Bindley's Appeal were appeals taken in the cases from the decree complained of. If however the parties in interest had acquiesced in the judgment against them, they would have been barred and concluded by it. The statute of limitation may be waived as was decided in Wallace's Appeal, 5 Pa. St. R., 103, and the waiver is as effectual by acquiescing in a judgment, to conclude the party, as by an express waiver.

It is also alleged that the sale by the administrator was never confirmed. The printed proceedings, page 28, show that the sale of the Lewis Walker tract (in controversy) was duly returned to the Orphans' Court in Northumber-

land county by Wm. R. Smith, administrator, and confirmed absolutely in April, 1837, by that court. This is strictly in accordance with the requirements of the act of 29th March, 1832, Sec. 32, printed in full above, as follows: "*And such executor, administrator or guardian shall in all cases make returns by his proceedings in relation to such sale or mortgage to the Orphans' Court of the county in which the real estate so sold or mortgaged lies, when, if the same be confirmed by the Court, it shall be confirmed.*"

The course of proceeding under the Pennsylvania statutes for the sale of real estate by an executor or administrator, situate in another county than that having jurisdiction over the accounts of the executor or administrator is as follows:

1. The petition must be presented to the court, (in this case to Orphans' Court, of Philadelphia,) having jurisdiction of his accounts for permission to sell or mortgage.

2. To present his petition to the court in which the land is situate, asking authority to sell, which, if granted, and sale made, the return of the sale must be made to the Orphans' Court where the land is situate and by this court confirmed.

3. Report to the court having jurisdiction of his accounts. This court has no control over the sale, can neither set aside nor confirm it. The report is for purposes of distribution only.

We briefly notice the authorities cited on this point by the plaintiffs in error. Stoolfus vs. Jenkins, 8 S. & R. 173, was a case in partition and that the husband of the daughter of an intestate cannot take the fee in right of his wife in partition, he has no greater interests in her share than in any other part of her estate, and the Orphans' Court has not the right to award him the fee of her share.

Dresher vs. Allentown Water Company, 52 Pa. St. R., 225, was an action of ejectment and decides that after the partition among the heirs the Orphans' Court may sell the decedent's real estate to pay the debts of decedent, such will prevail against the heirs title acquired by the proceedings in partition.

Torrance vs. Torrance, 52 Pa. St. R. 513 was where the court decided the petition for the sale, showed that the sale was not to pay debts, nor was it to pay a legacy, and the subject matter of petition was not within the jurisdiction of the Orphans' Court, but if petition had set out that the sale was to pay debts, then the debts would be presumed to have existed and the proceedings and decree of sale conclusive and not assailable collaterally.

Shorman vs. Farmers' Bank, 5 W. & S. 373, that the debts of a decedent ceased to be a lien after five years, although in his lifetime he made a voluntary conveyance of it for the purpose of defrauding his creditors.

York's appeal, 17 W. N. C. 33, has no reference to the limitation under the act of 1834, but under our statutes of six years' limitation relating to all debts.

The debt of Wm. R. Smith, being one of the debts for which the administrator's sale was made, was made a charge upon the land, and the statutes of 1834 had no application to it.

Nicholas Le Favre's will (printed evidence 18) contains the following: "I make as a part of my will that the debt due by me to Wm. R. Smith, Esq., counsellor-at-law, of Huntingdontown, and the State of Pennsylvania, to whom my obligation can never be repaid, be first paid the debt due by me to him, at the time of my decease, out of the next sale or sales following the same. His generous holding in times the worst was unbounden, and but that he is

rich as he is good, I would largely set him down in this, my will, however, as it is, I hereby will and order that on all sale or sales of my several properties in America that shall take place from and after my death, he shall be allowed, and he is hereby authorized to deduct and retain ——per cent. from the gross amount of such sale or sales, and further —— per cent on the proceeds he shall remit in good and safe bills to my wife, etc."

While the will was evidently drawn by the testator himself and not very precise in expression, it is evident that he subjected his real estate to the charge of his debt to Wm. R. Smith, and intended his administrator to have the power to sell. His will is "that the debt due by me to Wm. R. Smith shall be first paid out of the next sale following my death." The language is much like the case of Alexander vs. McMurray, 8 Watts, 504, a leading case. The language there was "my just debts and the devisee's hereinbefore made being first paid, it was held that this was a charge upon the land, and the divisee's did not take effect until after the debts were paid."

Also, Knecht's Appeal, 71 Pa. St. R., 333.
Steel vs. Henry, 9 Watts, 523.

The statute of limitation has no application to a debt charged upon the lands or subjected to the payment of specific debts, as in this case. This was ruled in Quigley vs. Beatty, 4 Watts, 14.

Third and fourth assignments:

The third assignment was the offer of the defendants below to show that other land was assessed to Dr. Ruston for the purpose of showing that Dr. Ruston made no claim to the Lewis Walker tract in controversy. It was the duty of the Deputy Surveyor to return all unseated land for taxation if the owner did not. If he knew who the owner was he might return it as his land, or he could return the name of the warrantee as owner, and in 1796 this was generally the practice. The Lewis Walker in controversy was returned and assessments made upon it in the name of the warrantee. The taxes were paid. How this could be explained by the return of other lands, not surveyed in one body and at the same time, but more than a year apart did not appear from the offer, nor does it now appear from the argument. If Dr. Ruston owned the land the return of the Deputy Surveyor of some other land would not defeat Dr. Ruston's title—and yet, if the offer was for any purpose, it was for this.

So as to the fourth assignment—When the Marshal sold the land in controversy he paid the taxes which had been assessed upon the Lewis Walker in controversy to John Boyd, the Treasurer of Northumberland county. This was offered to show payment of taxes upon the land. It was competent for that, and the taxes were paid upon the land as Dr. Ruston's. No other tract in the warrantee name of Lewis Walker was sold by the Marshal, and hence what appeared upon the assessment books as to some other tract could not show that Dr. Ruston did not claim the Lewis Walker in controversy. These offers, being irrelevant and immaterial, were properly rejected.

The plaintiffs in error complain in their fifth and sixth assignments of error of the rejection of the patent to Peter Grahl, dated the 12th day of April, 1797, and also of the rejection of the recital contained in the patent. The only offer to connect Peter Grahl with Lewis Walker was by this recital. The original deed poll was not offered and the conclusion is the plaintiffs in error did not have it, and as these deeds poll were as often made by the patentee as by the warrantee, and often right in the land office, such recital in a patent was never regarded in Pennsylvania as any evidence that such a deed ever existed, except as against a party claiming under the title of the patentee by conveyance subsequent to the date of the patent. Hence the patent without the recital was not evidence, and the rule of law, not only in Pennsylvania, but in the United States Courts is that recitals in a deed are not evidence against a stranger or one claiming by prior right to the date of the deed and the recital is not sufficient evidence of the deed recited so as to carry the date of the recited conveyance back of the date of the deed containing the recital. The recital is evidence against a party claiming title under the deed by conveyance subsequent. The peculiar system of granting lands by the Commonwealth of Pennsylvania, has made it necessary to give effect to warrants, surveys and patents so as to reach the real merit of each case without regard to who may have the paper title. The whole body of the public lands in the State were sold between the years of 1792 and 1795, and generally in large number of warrants to speculators, but the State has continued ever since to grant warrants and survey lands already granted, surveyed, returned and patented. The reason is that no system of survey was adopted by which the land surveyed could be located definitely by the officers in the land office, and therefore a warrant was granted for any lands applied for, notwith-

standing a prior grant, and patent issued upon the second warrant. The State, therefore, has in most of the lands received pay twice and often three times, and two or more patents have been issued to different warrantees for the same land. And these are not merely exceptional cases. Hence, we have in Pennsylvania a system *sui generis*. The patent does not have the same force or character it has when issued by the Government of the United States. It is not the question, "who has the patent, but who is entitled to it?" The patent inures to the benefit of the owner, whoever he may be. It confirms the title of the owner, whoever he may be, without regard to the person to whom the patent was issued.

The patent is but a confirmation of the warrant and survey. If it embrace more land than is surveyed it is void for the excess as against a subsequent warrantee.

Delaware and Hudson Canal Company vs. Dimock, 45 Penna. St. R., 393.

A patent which embraces land not included in the survey is void for the excess.

Kelly vs. Graham, 9 Watts, 116.

Though a patent conveys the legal estate against the Commonwealth, it will not prevail over a prior estate by warrant and survey.

Maclay vs. Work, 5 Binn, 154, 6 Sergt. and R., 118.
Woods vs. Wilson, 37 Penna. St. R., 370.

A patent enures to the benefit of the owner of the title, though issued to another

Urket vs. Coryell, 5 W. & S., 60.

Patent is not notice of the equities of a prior owner of the settlement right.

Woods vs. Wilson, 37 Penna. St. R., 379.

Patent does not locate the tract, but defines how much land the tract is to contain when located.

Hagerty vs. Mathers, 31 Penna., 348.

If a man wrongfully obtain a patent for land and pay the taxes, the real owners may recover it from him without reimbursing to him the costs of patenting and the taxes.

Urket vs. Coryell, 5 W. & S., 60.

A patent is not operative against the rights of a third person existing before the issuing of the patent. He may show that his right is better than that of him who obtained the patent, and for that purpose may inquire into the prior title of the patentee, whether by warrant, survey, settlement or otherwise, and show that his equitable title is better. Such patent may be impeached if tainted with fraud, procured by imposition, or in entire excess of the proceedings in which it is founded.

Balliet vs. Bowman, 5 W. & S., 155.
Smith vs. Vasbinder, 77 Pa. St. R., 130.

A patent is but prima facia title against prior claimants, and that a purchaser without notice of prior title and for value from the patentee, is in this respect, is no better position than the patentee.

Woods vs. Wilson, 1 Wright, 382.
Lewis vs. Bradford, 10 Watts, 76.
Duer vs. Boyd, 1 S. & R., 208.
Urket vs. Coryell, 5 W. & S., 60.
Maclay vs. Work, 5 Binney, 154.
Gingrich vs. Foltz, 7 Harris, 40.

In the United States, a patent issued by the United States, like the deed of an individual, is inoperative if the government never owned the property, or had previously conveyed it, or had dedicated it to uses which

precluded its sale. But the validity of a patent of the United States Government to land cannot be assailed collaterally, because in issuing the patent the act in issuing the patent is *judicial.*

Steel vs. St. Louis Smelting and Refining Company, 16 Otto, 447.

In Pennsylvania, however, the officer in granting a patent acts ministerially, and not judicially, and their patent is only prima facia evidence of title.

Burk vs. Seabold, 6 Serg. & Rawle, 140.

The plaintiff's in error offered no evidence outside of the patent and its recitals to connect the patentee with the warrantee, Lewis Walker. The learned court below rejected the recitals because the right of Dr. Rustin commenced with the vert inception of the title by payment of the purchase money before the warrant issued, and hence the recitals were not evidence against Dr. Ruston and those claiming under him.

This question was ruled in Penrose vs. Griffiths, 4 Binney, 231, a leading case in Pennsylvania, as follows: "The rule of law is that a deed (patent) containing a recital of another deed, is evidence of the recited deed, against the grantor and all persons claiming by title derived from him *subsequently.* What is the reason of this rule? It is this, the recital amounts to a confession of the party, and that confession is evidence against himself and those who stand in his place. But such confession can be no evidence against a stranger; it can be no evidence against one who claims by title derived from the person making the confession, *before* the confession made, because he does not stand in the place of the person making the confession; he claims paramount the confession. One who has conveyed his right can by no subsequent confession effect the right which he has conveyed.

To the same affect are the following cases, all involving patents:

Diggs vs. Downing, 4 Serg. & Rawle, 353.
Smith vs. Webster, 2 Watts, 478.
Lewis vs. Bradford, 10 Watts, 76.
Gingrich vs. Foltz, 7 Harris, 40.
Brock vs. Savage, 10 Wright, 87.
Green vs. Brennesholtz, 23, P. F. Smith, 426.

The same rule prevails in this court.

Marsh et al. vs. Brooks et al., 14 How., 513.
Same vs. Same, 8 How., 223.

In this latter case it is ruled that the recitals when evidence, are not enough to show that the title is of an earlier date than the date of the patent, which bears date 12th April, 1797, six months after the lien of the judgment of Clayland for use, &c., against Dr. Ruston in the Circuit Court of the United States, had attached to this land.

The claim of deed poll from Lewis Walker to Peter Grahl, 27 November, 1793, is conclusively shown, by the decisions in another part of the argument, to have been impossible. The warrant was not issued until it was paid for, and it was not paid for until 14 June, 1794, when Dr. Ruston paid for it, took it out and had it surveyed.

If Lewis Walker did convey to Peter Grahl it was before the Lewis Walker warrant had any existence, and if such a conveyance could have any effect at all, which we deny, then we say Peter Grahl had no better position than Lewis Walker. But no such conveyance was offered in evidence, and the plaintiffs in error relied upon the recital which was not evidence against Dr. Ruston.

The letter of attorney from John Grahl to Peter Grahl was in the same position. No conveyance was offered

showing Lewis Walker's right or Peter Grahl's right vested in John Graul. So far as the evidence shows, John Grahl never had any right to this land, and of course, he could not convey any by letters of attorney or otherwise.

Dr. Ruston's title to the six tracts of land, of which Lewis Walker was one, was seized by the Marshal and sold in 1803 to Nicholas Le Favre, and the title was conveyed from time to time until 1864, when R. N. Rothbune, for the consideration of $250,000, became the owner in trust for Dater, Fellows and others. These owners organized two coal companies. The Lewis Walker in controversy being a part of the Northumberland Coal Company. In 1864 this company took actual possession of the lands embraced in the articles of incorporation, and began the improvement of them by the erection of a dwelling house, and the opening of the coal in the tracts. The company expended about $50,000 upon the lands, and after about a year and a half suspended operations for the want of a railroad to enable them to transport the coal, but kept a tenant in the house until 1875, when the defendants entered upon the land, dispossessed the plaintiffs' tenant, and held the possession. See evidence 41, 42 and 43 pages printed record. This body of lands was assessed as early as 1796, and almost continuously thereafter to the parties claiming under Dr. Ruston and the taxes paid by them, as the evidence in the case most clearly shows. For more than 80 years the burthen of taxation fell upon the owners of the Ruston title, and during all that time no claim was ever made under the Grawl patent, no taxes paid, no possession taken and no claim of ownership made by the defendants.

The old Purchase Blotter was offered for the purpose of showing title in Dr. Ruston to the Lewis Walker tract;

not at the time of trial, but from the time the survey was made and returned to the land office until the seizure and sale of his title to Nicholas Le Favre, in 1803. Such being the case, it is very difficult to see what the doctrine of Strimpfler vs. Roberts, 18 Pa. S., 283 and the act of 22 April, 1856, or any other act of limitation had to do with the admissability of the evidence. The case of Strimpfler vs. Roberts was a very different case from the case on trial, in all of its material features. In that case, the warrantee conveyed his title in 1801 to Cumberland Dugon, to whom the patent was issued for the Sophia Myer tract in 1802; the claimants under the warrantee had claimed the land for more than forty years without any assertion of a claim to the land by Peter Benson, who, through his grantees, claimed a tract by virtue of the payment of the purchase money.

The learned Chief Justice says, on page 298 of that case: "Fifty-two years went around between the time when this purchase money was paid for this land and the bringing of the present suit. During all that time neither Benson nor his heirs, nor anybody else deriving title from him, made any claim to the land, nor paid taxes for it, nor exercised any act of ownership over it, nor manifested the least sign of consciousness that they had a title to it."

Again on page 299 of the same, no man, says Justice Sergeant, 2 Watts, 115, ought to be permitted to lie by while his rights can be fairly investigated and justly determined until time has involved them in uncertainty and obscurity, and then ask for an inquiry. Time will raise presumptions as conclusive for or against an original title as it will in other cases. The title of a warrantee is presumed to have been conveyed where no claim has been

made under it for a long time. 2 Binney, 468. It will be noticed in this connection that the Ruston title was conveyed from one to another for a period of eighty years before this suit was brought. Large sums of money were paid for it. Taxes were paid upon the land by the claimants of that title and possession actually taken in 1864, and continued for eleven years until interrupted by the defendants in 1875. During all that time neither Lewis Walker nor his heirs nor anybody else deriving title from him, made any claim to the land, nor paid taxes for it, nor exercised any act of ownership over it, nor manifested the least sign of consciousness that they had a title to it. Active claim of title to this land was made in the most authentic manner, in the only way that a claim of title can be made to wild and uncultivated land, by the claimants under Dr. Ruston, for a period of time, three times as long as was required to raise the presumption of law so clearly stated in Strimphler and Roberts, that a conveyance had been made by the warrantee to Ruston or those claiming under him.

In Brock vs. Savage, 7 Casey, 410, it is said Wilson undoubtedly had a title to this land by paying the State for the warrants, and the question which the plaintiff has to meet is whether the Wilson title has been so continued and asserted by him, and those claiming under him, as to have maintained its validity, or acquired additional force as against the patentee. The land has always been under the control and management of those claiming under Wilson. They have always paid all the taxes assessed on it, kept agents to watch it against all intruders, redeemed such parts of it as were at times sold for taxes from time to time, sold large portions of it, occupied and improved parts of it, had a controversy over forty years ago with

persons claiming a part of it under the patentees, and as a result thereof maintained their right and got releases for some thirty tracts and without any claim for any others being then set up by the patentees, and their title has not otherwise been opposed by the patentees until the bringing of this suit in 1855. The fact that this particular tract was by mistake dropped from the tax lists during a large portion of the time, has no effect upon the general question. When one man pays the purchase money to the State, and he and those claiming under him have the lands assessed, pay the taxes and exercise acts of control and ownership over them, *patents* taken out by the parties who made the application will inure to the benefit of him who paid the purchase money, although more than twenty-one years have elapsed since the *patent* issued.

Possession to bar the claims of a patentee, or to raise the presumption of a conveyance by him to the party who has title by the payment of the purchase money to the State, for the warrants, need not be such possession as would give title to a trespasser under the statutes of limitation. A continued claim of ownership, payment of taxes and acts of assertion of title for thirty years, and now claimed by the patentee, will raise the presumption of a conveyance by the patentee to the claimants of the title who paid the State for the land.

All the facts necessary to raise the presumption had been laid before the court and jury. They were clear, decisive and without controversy before the defendants offered the Grawl patent in evidence. As the case was presented then on the facts and the law as held by the courts of the state, the patent was not evidence of title in Grawl or anyone who might claim under him. but it enured to

the benefit of the plaintiffs' title. The doctrines contended for is sustained by the following cases:

Brock vs. Savage, 10 Wright, 83.
Glass vs. Gilbert, 8 Smith, 266.
Taylor vs. Dougherty, 1 W. & S., 325.
Hasting vs. Wagner, 7 W. & S., 215.
Turner vs. Waterson, 4 W. & S., 172.
Fox vs. Thompson, 7 Casey, 172.
Smith vs. Webster, 2 Watts, 478.

The officers of the land office had no right to grant the patent to anybody but Dr. Ruston or those claiming under him, as the evidence of Ruston's ownership was contained in the books of their office. The patent was in fraud of Ruston's rights, was void as against his title, and inured to his benefit.

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DEFENDANTS' HISTORY OF THE CASE.

Supreme Court of the United States.

October Term, 1885, No. 399.

JANE HERRON AND CHARLES D. HERRON, HER HUSBAND, IN RIGHT OF SAID JANE; ELIZABETH B. JACKSON AND JOHN A. JACKSON, HER HUSBAND, IN RIGHT OF SAID ELIZABETH B.; CHARLES J. TOWER AND R. M. CUMMINGS, Plaintiffs in Error,

VS.

PHILIP DATER, AND ELIZABETH L. FELLOWS.

In Error to the Circuit Court of the United States for the Western District of Pennsylvania.

JOHN W. RYON,
SAMUEL LINN,
JAMES RYON,
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Standard Pub. Co., Pittsville, Pa.

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VS.

PHILIP DATER, AND ELIZABETH L. FELLOWS.

In Error to the Circuit Court of the United States for the Western District of Pennsylvania.

HISTORY OF THE CASE.

This action of ejectment was brought by Philip Dater and Elizabeth L. Fellows against Jane Herron and others to recover a tract of land, situate in Mount Carmel township, Northumberland county, containing 230 acres and being part of a tract of land surveyed on the 22nd of October, 1794, in pursuance of a warrant dated November 26th, 1793 granted by the Commonwealth of Pennsylvania to Lewis Walker.

First. In support of the plaintiffs' title they introduced in evidence a certified copy of the application, as follows: "William Elliot applies for 400 acres of land in a branch of Roaring Creek, adjoining Doctor Thomas Ruston's land in Catawissa township, Northumberland county. Joseph Tyson applies for 400 acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining Doctor Thomas Ruston's other lands in Catawissa township, Northumberland county. Lewis Walker applies for 400 acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining Doctor Thomas Ruston's other land in Catawissa township, Northumberland county. William Shannon applies for 400 acres of land lying one mile north of a road leading from Reading to Sunbury, adjoining other lands of Dr. Thomas Ruston, in Catawissa township, Northumberland county. January 10th, 1794, Nathaniel Brown 400 acres, adjoining land, the north of lands granted to Robert Irwin, Northumberland county, 50 P. C.

Second. The application was followed by a certified copy of an old purchase voucher, No. 12,969, which reads as follows: 26th November, 1793. Joseph Tyson, 400 acres, lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other lands in Northumberland county. William Elliot, 400 acres, situate on a branch of Roaring Creek, adjoining Dr. Thomas Ruston's other lands in Catawissa township, said county. Lewis Walker, 400 acres, lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other lands in said county. William Shannon, 400 acres, lying one mile north of a road leading from Reading to Sunbury, adjoining Dr. Thomas Ruston's other land in said county. Ebenezer Branham, 400 acres, on a branch of Roaring Creek, adjoining land of Dr.

Thomas Ruston, said county. Nathaniel Brown, 400 acres, on a branch of Roaring Creek, adjoining land of Dr. Thomas Ruston's in said county. A. M. P. £60 interest from date thereof. A general receipt wrote.

Third. Plaintiffs then offered in evidence a certified copy of the old purchase blotter, which reads as follows: "12969, June 14th, 1794. Dr. Ruston's 6 wts of 400 ea amt 2400 A. 50s pct. pd specie ch £60. rect. dd fees 60s pd rem ch of 160 Ds."

These entries in the old purchase blotter were offered to show the payment of the purchase money upon the six tracts contained in the purchase voucher, by Dr. Thomas Ruston, and as a consequence his ownership of the Lewis Walker by virtue of the payment of the purchase money.

Plaintiffs then introduced certified copy of warrant issued by the Commonwealth of Pennsylvania to Lewis Walker for 400 acress of land, as described in the application and voucher, bearing date the 26th of November, 1793, and followed the warrant by a certified copy of a survey made by the Deputy Surveyor of said district on the 22d day of October, 1794, in pursuance of said warrant containing 371 acres and a quarter. The survey was followed by a certified copy of the returns made by William Gray, the Deputy Surveyor, into the land office, showing that on the 23d of February, 1795, the survey of the Lewis Walker was returned to the land office and accepted. Warrants and surveys of the other five tracts were introduced in evidence in connection with the warrant and survey of the Lewis Walker, being the same tracts of land which are mentioned in the application and purchase voucher.

Plaintiffs then exhibited exemplification of the record from the Circuit Court of the United States for the Eastern District of Pennsylvania, of a judgment of James Claylon for the use of John Gibson vs. Thomas Ruston, No. 44, September Term, 1796. Judgment obtained 13th October, 1796, for £3735, 8 shillings and 4½ pence. Upon this judgment a levy was made upon the Lewis Walker together with other lands of Dr. Ruston, and the same was sold to Nicholas Le Favre. Deed was made for the Lewis Walker tract by John Smith Marshall to Nicholas Le Favre, dated the 11th of October, 1803. The same deed included the Joseph Tyson, the William Elliot, the William Shannon and Nathaniel Brown tracts of land.

Nicholas Le Favre died, having previously made his will, which was probated the 12th of August, 1815. William R. Smith took out letters of administration with the will annexed, on the 15th of August, 1815. A schedule annexed to Nicholas Le Favre's will shows that he claimed the Lewis Walker tract among other lands he owned in Pennsylvania. A copy of the will with the schedule annexed will be found from page 17 to 24 of printed record.

In 1836 William R. Smith, the administrator of Nicholas LaFevre, petitioned the Orphans' Court of Philadelphia, that Court having jurisdiction of the accounts of the said administrator, for an order of sale to pay the debts of the said decedent. By further proceedings upon said application in the Orphans' Court of Northumberland county, where a portion of the lands of Nicholas LaFevre were located a decree of sale was obtained and the William Elliot, the Lewis Walker, William Shannon, Nathaniel Brown ane another survey owned by LaFevre in the name of Abraham Scott were sold on the 9th day of May, 1837 to Joseph Brobst, as the property of Nicholas Le Favre.

Deed made to Brobst for the said tracts of land and the sale was duly confirmed in Northumberland county where the lands were located according to the requirements of the Act of Assembly.

On the 9th of June, 1837, Joseph Brobst and Annie, his wife, conveyed to Hugh Bellas the five tracts of land which he had purchased at administrator's sale as the property of Nicholas Le Favre, and on the first day of January, 1846, Hugh Bellas and his wife conveyed to Cornelius Garretson, the Lewis Walker, the William Elliot, William Shaneon and Nathaniel Brown tracts, four of the tracts of land which he had purchased from Brobst.

On the 13th of February, 1849, Cornelius Garretson conveyed to Alexander Garretson one undivided half interest in said four tracts of land. Then on the 16th of April, 1864, the Lewis Walker, Willirm Elliot, William Shannon and Nathaniel Brown tracts were conveyed by Garretsons to Rollin N. Rathbun for the consideration of two hundred and fifty thousand dollars.

On the first of day August, 1864, Rollin N. Rathbun, party of the first part, who held the title in trust, George A. Fellows, Philip Dater, Robert H. Rathbun, E. P. Wilder and Robert Lockhart, parties of the second part, and The Columbia Coal Company, party of the third part, conveyed the eastern portion of these four tracts, containing 1,053 acres, embracing the Nathaniel Brown, William Shannon and the eastetn part of the Lewis Walker tract to the Columbia Coal Company.

And a similar deed was made of the same date by Rollin N. Rathbun, party of the first part, Elisha A. Packer, James M. Benedict, John E. Rathbun, Joseph

Colt and George B. Newton, parties of the second part, and The Northumberland Coal Company, party of the third part, conveyed the western part of these four tracts to The Northumberland Coal Company, containing 997 acres, and embracing the William Elliot and the western part of the Lewis Walker tract.

Record of judgment was next offered of George A. Fellows against the Columbia Coal Company. The inquisition and seizure of this land, which included in Northumberland county that portion of the Lewis Walker in controversy in this case, sale had by the Sheriff to George A. Fellows and Lewis Dater. Deed by the Sheriff to Fellows and Dater, dated the 15th of March, 1872, for the lands in controversy. This was followed by proof of death of George A. Fellows, of his will devising all his property to Elizabeth L. Fellows, co-plaintiff in this suit with Philip Dater.

By the Lawf of Pennsylvania taxes assessed upon wild and unimproved lands are made a lien upon the land. They are no personal charge against the owner, whoever he may be. The only compulsory mode of enforcing the payment of such taxes is by a sale of the land.

In 1796 the Deputy Surveyor of Northumberland county returned to the Commissioners for taxation, in accordance with the provisions of the act of Assembly then existing, the William Elliot, opposite No. 753; 754 was Lewis Walker, warrantee, 371¼ acres - No. 755, William Shannon, warrantee, 415 acres; No. 756, Nathaniel Brown, warrantee, 400 acres. This return by the Deputy Surveyor was followed by an assessment by the County Commissioners of Northumberland county, in the unseated land book of the Lewis Walker from 1796 to 1805 inclusive. When the Marshall sold Dr. Ruston's lands in

Northumberland county to Nicholas Le Favre, some of the taxes assessed upon the Lewis Walker remained unpaid, and out of the proceeds of the sale of Dr. Ruston's lands he paid $16.85 taxes. The unseated land books of Northumberland county showed assessment from 1805 to 1813 inclusive, of the William Elliot, the Nathaniel Brown, the Lewis Walker and the William Shannon to Nicholas Le Favre, as the owner of said warrants, and the taxes were regularly paid during those years upon those tracts of land. From 1836 to 1839 the said tracts of land were assessed in Shamokin township, Northumberland county, and from 1840 to 1844 the William Shannon, William Elliott and Lewis Walker were assessed in Cole township, in said county. From 1846 to 1851 the same tracts of land were assessed to Cornelius Garretson and the taxes paid. From 1852 to 1857 the same tracts of land were assessed to Cornelius Garretson and the taxes were paid. From 1858 to 1865 the same tracts of land were assessed to Cornelius Garretson and the taxes were marked paid. From 1865 to 1882 these lands were assessed to the Northumberland Coal Company; that is, the William Elliot, the Lewis Walker and William Shannon were assessed to the Northumberland Coal Company and the taxes were paid.

In the statement of the case by the plaintiffs in error the remark is made that in the assessments from 1836 to 1846 the name of no owner was given and it does not appear that any taxes were paid. The evidence shows that in 1837 Hugh Bellas became the owner of these lands and held tne title until 1846 when he sold out to Garretson. Mr. Bellas was a resident of Sunbury, Northumberland county, a lawyer at that bar, perfectly familiar with the land laws and tax laws of Pennsylvania. If taxes remained unpaid upon unseated lands for two years it was

the imperative duty of the Treasurer to sell all such lands and if the record showed no sale of the lands and no abatement of the taxes the presumption is conclusive that the taxes were paid. It is not pretended that either Grahl or any one claiming under his fragmentary title ever paid any taxes upon these lands before Mr. Cummings surreptitiously got possession of the land in 1875.

From 1796, when the lands were first assessed, down to 1882, when this ejectment was brought, whenever these lands were assessed by the County Commissioners and charged with the payment of taxes, those taxes were paid by the parties claiming under the title of Doctor Ruston, all of which is very conclusively shown by the evidence in this case.

It is proved without contradiction by the testimony of John E. Rathbun, pages 41 and 42 of the record in this case, that after the purchase of these lands in 1864, possession was immediately taken of the land, embraced in that purchase; that a house and saw mill were erected upon the land and a corps of men were put at work to prove the coal veins; tnat two other dwellings were partially constructed. At the time these claimants began work upon these lands in 1864 they were wild and unimproved and there was no railroad nearer than three and one-half miles; that they expended between forty and fifty thousand dollars upon the lands; that their operations and expenditures continued for a period of one and one-half years Then they suspended work because they had no railroad facilities to handle coal. Isaac Lewis was left by them in charge of the property. Lewis was followed by Jonathan Hoover. Hoover was made the agent of these lands to look after them and take care of them and keep trespassers off. He put his son-in-law to live in

the house upon the lands. Hoover died in 1872. William Griffith occupied the lands under these claimants for two or three years. Then they had William Hand to live there. Hand left in 1873 and they put Edward Davis in possession. Davis was living in the house when the defendants came there and by an arrangement with Davis the plaintiffs' in error tenants got into possession. When the owners of the lands found out that the defendants had obtained a foothold upon the land they attempted to dispossess them, but they retained the possession by force. Hence the necessity of this action of ejectment to dispossess them.

It is a matter of no moment as bearing upon the fact of possession that the dwelling house built by plaintiffs was not upon the Lewis Walker tract. It was on the body of lands which we claimed under the purchase stated in this history of the case, and it is enough to show the actual possessian of every rod of land within the boundaries described in their conveyance.

An occupation and improvement of any portion of the land within the baundaries of their title, gives to them actual possession of all the lands claimed by them. See Brock & Savage, 7th Casey, 412, and 10th Wright, 83.

The defendants below offered copy of patent from the State to Peter Grahl, dated the 12th of April, 1797, for the Lewis Walker tract surveyed in pursuance of his warrant, dated November 26th, 1793. The patent recited that Lewis Walker, by deed dated November 27th, 1793, conveyed the Lewis Walker tract to Peter Grahl. It was objected by the plaintiffs below that the recital in the patent was not evidence against Dr. Ruston and those claiming under him, because his title began with the purchase of the warrants and payment of purchase money,

all of which have been shown, and as his title preceded the making of the patent, the recitals in it were not evidence. Without the recital in the patent there was nothing to connect Peter Grahl with the title to Lewis Walker's survey. In his hand such a patent was not worth quite as much as the parchment upon which it was written. It is a little remarkable too that as this warrant to Lewis Walker was an indescriptive one, and gave no title to anyone until it was actually surveyed upon the ground, and that survey made according to the evidence, on the 22d day of October, 1794, that there should be in this patent to Peter Grahl a recital of a deed made the 27th day of November, 1793, eleven months before the land was designated; eleven months before there was any survey under that warrant of any land.

It is perfectly manifest that the recited deed in that patent could have contained no description of any land, and as the instrument recited was not presented, it is impossible for anybody to say whether it resembled anything in heaven, in the earth or beneath the earth. This patent was very properly rejected by the court. Its admission would have been immaterial as was its rejection, because under the uncontradicted evidence in the case if it had been evidence of any title in Peter Grahl, the court would have been obliged to charge the jury that the presumption of law was that the title under the patent vested in the claimants of the land under Dr. Ruston.

The patent was again offered in connection with certain disconnected fragments of claim of title. For instance, a power of attorney from John Grahl to Peter Grahl, dated the 4th of June, 1799, authorizing his attorney in fact to grant, bargain and sell any lands that he, John Grahl, might own in Northumberland county. As poor as Peter's title was he had never conveyed it to

John. Therefore, the power of attorney was simply authority from John Grahl to Peter Grahl to convey the title of John Grahl to certain lands; to convey land that John Grahl never had any title to or claim of title to so far as was disclosed by the evidence in this case. To be followed by a deed from Peter Grahl as attorney in fact of John Grahl, of John Grahl's title to several tracts of land in Northumberland county, including the Lewis Walker, to Charles Tower, dated 11th February, 1800. Next the will of Charles Tower, 29th December, 1829, letters testamentary to Jeremiah Tower and John Anderson as executors.

Thus it will be seen that without showing any actual possession of this land in John Grahl, without showing any connected claim of title to the land in John Grahl, they offered his deed under such a condition of facts that the deed was clearly inadmissable as evidence, and the court was clearly bound by the well settled decisions of Pennsylvania to reject it. In order to justify the admission of a deed in evidence you must show one of two things, actual possession of the land by the grantor, or title to him from the Commonwealth or from some one claiming the title under the Commonwealth.

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